REPORT TO THE ATTORNEY GENERAL

BY THE TASK FORCE ON

PUBLIC LEGAL SERVICES IN BRITISH COLUMBIA

Province of
British Columbia

Task Force on
Public Legal Services

AUGUST, 1984

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BY THE TASK FORCE ON
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AUGUST, 1984

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APPENDIX A - INDIVIDUALS AND GROUPS MAKING SUBMISSIONS

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July 31, 1984

The Honourable Brian R. D. Smith, Q. C.
Attorney General
Parliament Buildings
Victoria, British Columbia
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Dear Mr. Smith:

We, the Task Force on Public Legal Services, submit herewith our report on the completion of the work you assigned to us by your December 8, 1983 letter establishing the Task Force.

During December, January and the first weeks of February we met to consider our terms of reference and commissioned a series of studies by Task Force members and experts on the issues arising out of our mandate. We also arranged that, from mid-February to the end of March, panels of at least three Task Force members would travel to twelve locations across the province to conduct fifteen public hearings and that wide publicity would be given in advance of these hearings to encourage all interested persons to submit written briefs or make presentations in person to the Task Force.

The Task Force members were impressed by the great number of persons who attended each hearing and by the quality of the submissions made to the Task Force. In total approximately three hundred written and oral submissions were received by the Task Force. A great many valuable suggestions and ideas have been obtained from these submissions and the members of the Task Force would like to thank those interested persons and organizations who took the time and made the effort to contribute to the deliberations on this important matter.

... /2

The written and oral submissions we received together with the studies prepared at our request formed the basis of the deliberations of the Task Force subsequent to the conclusions of the public hearings. Those deliberations have been ongoing for the past three months and have involved many meetings. The report which we respectfully submit herewith is the product of those deliberations.

Yours very truly,

E. N. (Ted) Hughes
Chairman

Michael Jacobsen

R. D. Adamson

Frank Maczko

Loretta Chaperon

Stephen Owen

John Hall

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Attachment

Province of
British Columbia

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December 8, 1983

Honourable E. N. Hughes, Q.C.
Chairman
Task Force on Legal Services to the Public
5th floor, 609 Broughton Street
Victoria, British Columbia

Dear Mr. Hughes:

I would first like to thank you for agreeing to serve as Chairman of the Task Force on Legal Services to the Public. I consider my responsibility for ensuring that publicly-funded legal education and client services are effectively and efficiently provided to be one of the most vital aspects of my office. In these difficult economic times, it is incumbent upon a responsible government to examine the delivery system for a whole variety of government-funded services to the public. This is as true with respect to legal services as it is to any other. In the case of legal services, however, questions such as what sort of services ought properly to be considered essential or who ought to be entitled to receive such services are acutely difficult given our society's commitment to the principle of equality before the law. Accordingly, I view the work of your task force as extremely important and look forward with great interest to receiving your recommendations.

The terms of reference for your task force are:

1. To enquire into and make recommendations respecting the nature, range and priority of legal services (i.e. specific client services, general legal education and counselling to members of the public) which ought properly to be deemed essential and provided at public expense. In this regard reference should be made to the Canadian Charter of Rights and Freedoms, the Legal Services Society Act, the proposed Young Offenders Act and all relevant Federal-Provincial instruments (i.e. the cost-sharing agreement on criminal legal aid and the Canada Assistance Plan).

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2. To enquire into and make recommendations respecting eligibility requirements for legal aid. Consideration should be given as to whether, in addition to the financial circumstances of an applicant, factors such as the nature of the service to be provided or an applicant's user history respecting legal aid should be involved in any determination of eligibility.

3. To enquire into and make recommendations respecting the financing of the public legal services system. Given the inherent limitations on traditional sources of funding, emphasis should be given to the consideration of appropriate funding alternatives. The funding issue should be considered once the issues of scope and eligibility have been dealt with and the cost of the resultant program estimated. The analysis of this issue should involve the consideration of the operational nature of the public legal services system. Emphasis should be given to a determination of the most cost-effective method for the delivery of such services.

The terms of reference have been fashioned in the broadest possible terms in order to allow you and your fellow task force members the widest latitude for enquiry. So too I wish you to have broad discretion to determine for yourselves the most effective manner in which you go about obtaining the information necessary to your decision-making. I encourage you to entertain written or oral submissions from any and all parties interested in this matter.

I have instructed my officials to set aside a small budget for the activities of your task force. In addition, I have asked them to provide the task force with whatever information or other assistance that may be of use. In particular, I have asked Mr. David Marley, a contract consultant with my ministry, to serve as Secretary to the task force. Because funds are extremely limited I regret that I am not able to offer a per diem payment to task force members for their most valuable contribution of time and effort. All reasonable travel and other out-of-pocket expenses will be reimbursed by my ministry.

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I would ask that the task force submit to me a progress report, on a confidential basis, by no later than the end of March, 1984, and a final report, on the same basis, by no later than the end of June, 1984. I will make the final report public at an appropriate time thereafter.

Once again, thank you for your assistance. Kindest personal regards.

Yours sincerely,

Brian R.D. Smith
Attorney General

THE TASK FORCE ON PUBLIC LEGAL SERVICES

CHAIRMAN:

Honourable E. N. (Ted) Hughes, Q. C.

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John Hall Q. C.

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SUMMARY OF RECOMMENDATIONS

I. INTRODUCTION

In his letter of December 8, 1983, the Honourable Brian R. D. Smith, Q.C., stated, among other things, that:

> "I consider my responsibility for ensuring that publicly funded legal education and client services are effectively and efficiently provided to be one of the most vital aspects of my office"

The verbal and written submissions received by the Task Force clearly indicate that a large proportion of those who expressed their views to us share the Attorney General's perception of the importance of these services and the need to ensure their effective and efficient provision.

On the matter of what coverage is essential, the clear consensus of the submissions, almost without exception, was that family law legal aid services were now inadequate and must be expanded in order to ensure that the basic needs of people are met. There was also strong representation from many that administrative law services (i.e. legal services to assist in unemployment insurance claims, veterans and other pension and benefit claims, workers' compensation claims, social assistance claims, etc.) were currently inadequate to meet the essential needs of people. In the field of criminal law, the commonly expressed view was that the nature and extent of legal aid services available in 1982 prior to the first retractions that year by the Legal Services Society met the essential needs of people. In the opinion of most who expressed views on this matter, assuming that the statutory legal aid requirements provided for in the Young Offenders Act

(Canada) were met, essential legal aid needs of persons charged under that Act would be met. It was recognized that, besides the family law and administrative law coverage described above, other civil law coverage where liberty, safety, health or livelihood of individuals were threatened required consideration and that legal aid in such circumstances could be an essential service. The need for special services to ensure that Native persons had real and practical access to the essential services described in this paragraph was itself seen in many of the submissions as an essential service. It was observed that through innovative use of courtworkers, para-legals, self help materials and other forms of assistance these essential services could be more efficiently and effectively made available to many persons.

Turning to the issue of eligibility for public legal services, there was a consensus in the submissions to the Task Force that only individuals and not corporations should be eligible. In order for duty counsel and prevention and self help services to be provided in a manner that serves the needs of persons otherwise qualifying for legal aid, persuasive argument was made to the Task Force that no eligibility test should be applied as a pre-condition to the receipt of such services. On the other hand, there was a consensus in the submissions that an eligibility test should apply in order for an individual to qualify to receive legal aid services. The basic elements of this eligibility test would be that an individual qualify in accordance with flexible financial criteria and in accordance with consequences criteria that his or her liberty, safety, health or livelihood must be in jeopardy. Except in cases where the legal aid applicant was being

prosecuted for a criminal offence or was the parent of an apprehended child in proceedings under the Family and Child Service Act, the merits of the applicant's case (i.e. whether a prudent person of modest means would spend his or her own money to retain private counsel in the matter) should also be applied. The nature and extent of these financial, consequences and merit criteria are detailed in Chapter 6 as are certain exceptions to those criteria. The reasonable obligations of eligible individuals to share in the cost of legal aid services they receive are recommended in Chapter 6 as well.

The manner of delivering public legal services and, in particular, legal aid services is discussed in Chapter 7, while Chapter 8 considers in detail the related matter of the legal aid tariff.

The third major focus of inquiry, along with coverage and eligibility, was alternative funding to help meet the cost of providing the coverage of essential public legal services to all eligible persons. Before considering new sources of alternative funding, the Task Force considered whether the revenues of the Law Foundation, established under the Barristers and Solicitors Act, could be enlarged, thereby providing additional funding for the Legal Services Society. The Task Force is convinced that current revenues of the Law Foundation could be increased three-fold.

Criteria have been established for the assessment of alternative potential funding sources. Chapter 10 discusses several suggested sources in light of the established criteria, and ten members of the

Task Force have concluded that a proposal for the levying of a percentage tax on privately purchased legal services should be recommended. It has been estimated that each percentage point of tax would yield approximately $2 million to $2.5 million.

Specific recommendations appear at the end of each chapter.

CHAPTER 1

CRIMINAL LAW COVERAGE

I. INTRODUCTION

For the purposes of this report, "criminal law" includes

(a) indictable offence proceedings under a federal enactment,

(b) summary offence proceedings under a federal or a provincial enactment,

(c) proceedings under the Extradition Act or the Fugitive Offenders Act,

(d) proceedings under the Young Offenders Act (Canada) and the Young Offenders (British Columbia) Act, and

(e) appeals by the Crown or by an accused from the rulings or decisions at trial of an above mentioned matter.

II. ISSUES

1. **Should every person charged with a criminal offence who meets reasonable financial eligibility criteria be entitled to legal aid?**

The British Columbia Branch of the Canadian Bar Association said in its brief to us:

> We support the recommendation of our Criminal Justice Section (Vancouver) that legal aid be available to any eligible applicant charged with a criminal offence. The Crown, be it federal or provincial, is always represented by counsel. The risk of an unfair result, we submit, is too great if the accused, by reason of impecuniosity, is denied representation. By unfair result, we include not only an improper conviction on the question of guilt or innocence, but as well, conviction of the wrong offence, the imposition

> of an improper penalty, and the unscrutinized breach of the state of procedural safeguards. Many of our basic rights and freedoms have grown out of the criminal legal process. No one of us has any greater rights or freedoms than those we afford the lowest member of our society.

The above quoted submission states what must surely be desirable, but the availability of funding may from time to time make the attainment of such levels of coverage impractical. Our task is to address the question of essential services. Issues associated with the eligibility of applicants for legal aid are discussed in Chapter 6.

2. What, then, is essential coverage for eligible persons?

(a) Duty Counsel

We heard numerous submissions in many areas of the province (including the opinion of some members of the judiciary) attesting to the vital and helpful services provided by the duty counsel system. It is a service that is highly cost-efficient and that clearly serves the justice system well in savings of time and money. This is one area that definitely should not be cut back in any way; rather, it is our view that some modest expansion of this service is warranted.

We believe that duty counsel should be available for all bail hearings, guilty pleas and first appearances. As a general rule, this on-the-spot service should not be subject to determination of financial eligibility.

(b) **Indictable Offences**

Legal aid should be furnished to all eligible persons charged with an indictable offence where the Crown is proceeding by indictment. The risks of imprisonment, loss of the means of earning a livelihood OR of a miscarriage of justice that arise when a person is denied access to legal counsel in such cases is too great for such coverage not to be seen as an essential service.

(c) **Summary Offences**

Legal aid should be furnished to all eligible persons being proceeded against summarily under a federal or a provincial enactment where, in the opinion of the Legal Services Society, there is a likelihood that, on conviction, there will be a sentence of imprisonment or the loss of the means of earning a livelihood or where, in the opinion of the Legal Services Society, special circumstances warrant the provision of legal aid.

To help ensure fairness in the process and without limiting the circumstances that might be deemed special, we would note the following as worthy of consideration:

(i) physical, mental or linguistic incapacities on the part of the accused;

(ii) the particular complexity of the circumstances or legal issues in the case;

(iii) any apparent abuse of police or prosecutorial discretion.

The rationale for considering legal aid as essential in the foregoing summary offence proceeding situations is the same as that for considering as essential legal aid to all eligible persons charged with indictable offences.

(d) Young Offender Proceedings

In principle, we believe that the same coverage should be provided as an essential service to eligible persons charged under the Young Offenders Act (Canada) or the Young Offenders (British Columbia) Act as for eligible adult persons proceeded against summarily. Given that the Young Offenders Act (Canada) creates a statutory right to counsel in certain circumstances that may exceed this standard, we recommend that the provision of legal aid to the standard of defence counsel representation mandated by that Act for young persons otherwise unable to obtain defence counsel be considered an essential service.

(e) Proceedings under the Extradition Act or the Fugitive Offenders Act

By analogy with the indictable offence situation, we recommend that legal aid be provided as an essential service to all eligible persons proceeded against under either of these two Acts.

(f) Appeals

We recommend that it be considered an essential service that eligible persons receive legal aid for the purposes of:

(i) appeals by the Crown in any matter adverted to in paragraphs (b) to (e) above; and

(ii) appeals by an accused in any matter adverted to in paragraphs (b) to (e) above where, in the opinion of the Legal Services Society, the appeal appears to have substantial merit or involves a substantial miscarriage of justice, or where the Court requests the appointment of counsel on behalf of the appellant.

3. **Should a different standard apply to drug conspiracy cases?** We have heard a number of comments on the question of the coverage of lengthy drug conspiracy cases. It had been the perception of some members of the Task Force that these cases were a serious drain on legal aid. After examining the facts, we found this not to be a soundly based perception. The proportion of resources devoted to this class of case by the Society is miniscule, being approximately 1% per annum. Additionally, this sort of case is one area where costs to the criminal justice system generally would be greatly escalated in our view by the absence of counsel to move the process forward. We can see no basis for any change in the usual approach of the Legal Services Society to this class of case, that is, that they should be dealt with in the same manner as other indictable offences.

4. **Impaired Drivers**

The Task Force is of the opinion that charges laid under section 236 (Over .08) of the Criminal Code are unique and may merit different legal aid coverage rules.

These charges are almost always dealt with by way of summary procedure, for which we have generally recommended legal aid coverage where there is a likelihood of imprisonment or loss of the means of earning a livelihood upon conviction. This "consequences" test assumes that charges which present a substantial risk to a person demand the presence of defence counsel to assist in ensuring the fairness of the judicial process.

However, the Task Force is of the opinion that section 236 charges are distinct from other types of offences in that the presence of defence counsel is less likely to have an impact on the outcome of the case. The breathalyzer or blood sample procedure provides a scientific basis for conviction, which is incontrovertible in most cases.

Therefore, some Task Force members recommend that legal aid coverage not be available for the defence of charges laid under section 236 alone, or under sections 234 and 236 together, except where, in the opinion of the Legal Services Society, special circumstances exist which require the assistance of defence counsel to ensure the fairness of the judicial process. They recognize that such a limit is within the statutory discretion of the Society and would not offend the Federal/Provincial cost sharing agreement for criminal legal aid.

Other Task Force members are of the opinion that a real risk to liberty or livelihood alone is sufficient to make the

availability of defence counsel essential. However, these members agree with the reasoning that distinguishes "Over .08" offences and, therefore, consider them to be of the lowest priority for legal aid coverage, should funding be inadequate to cover all cases.

In dealing selectively with this category of offence, the Task Force recognizes that it is generally inappropriate and dangerous to have different terms of legal aid coverage for different offences.

5. **Reciprocity**

Where residents of other jurisdictions require legal services in B.C., the Legal Services Society attempts to provide the same coverage for them as it does to B.C. residents. Within Canada, criminal coverage is standardized by the Federal/Provincial cost-sharing agreement for criminal legal aid which states that all provinces must give coverage to residents of other provinces. For civil coverage, this procedure is formalized by an interprovincial reciprocity agreement among the provincial legal aid plans. Financial eligibility is determined by the province of residence, and level of coverage is determined by the province delivering the service.

British Columbia also provides coverage for eligible persons from outside of Canada appearing in B.C. courts and maintains informal relations with legal aid plans in foreign jurisdictions

to provide coverage for B.C. residents. In practice, B.C. residents benefit on an approximate 2:1 basis by these arrangements.

III. SUMMARY OF RECOMMENDATIONS RELATING TO CRIMINAL LAW COVERAGE

1. Duty counsel service should be expanded in order that this on-the-spot essential service be available to all accused persons for bail hearings, guilty pleas and first appearances.

2. Legal aid should be furnished as an essential service to all eligible persons charged with an indictable offence where the Crown is proceeding by indictment.

3. Legal aid should be furnished as an essential service to all eligible persons being proceeded against summarily under a federal or provincial enactment, including the Young Offenders (British Columbia) Act, where, in the opinion of the Legal Services Society, there is a likelihood that, on conviction, there will be a sentence of imprisonment or the loss of the means of earning a livelihood or where, in the opinion of the Legal Services Society, special circumstances warrant the provision of legal aid.

4. Legal aid should be furnished as an essential service to all eligible persons charged under the Young Offenders Act (Canada) where, by the terms of that Act, the accused is entitled to be represented and cannot otherwise obtain defence counsel.

5. Legal aid should be furnished as an essential service to all eligible persons proceeded against under the Extradition Act or the Fugitive Offenders Act.

6. Legal aid should be furnished as an essential service for the purposes of:

   (a) appeals by the Crown in any matter adverted to in recommendations 2 to 5 above; and

   (b) appeals by an accused in any matter adverted to in recommendations 2 to 5 above where, in the opinion of the Legal Services Society, the appeal appears to have substantial merit or involves a substantial miscarriage of justice, or where the Courts requests the appointment of counsel on behalf of the appellant.

7. Drug conspiracy cases should be dealt with for legal aid purposes in the same manner as other indictable offences.

8. The Task Force was divided on the issue of coverage where charges are laid under section 236 ("Over .08") of the Criminal Code. One opinion was that coverage not be available where charges are laid under section 236 alone or under sections 234 and 236 together, except where, in the opinion of the Legal Services Society, special circumstances exist which require the assistance of defence counsel to ensure a fair trial. The other opinion was that the jeopardy to liberty or livelihood entailed in a charge under section 236 warrants legal aid

coverage being considered essential for eligible individuals charged under that section.

9. The Legal Services Society should continue to participate in the interprovincial reciprocity agreement by providing the same coverage to residents of other jurisdictions who require legal services in B.C. as it does to residents of B.C.

CHAPTER 2

FAMILY LAW COVERAGE

I. INTRODUCTION

Family disputes give rise to a broad range of civil and criminal proceedings. From the public legal services perspective, criminal proceedings arising from family disputes are indistinguishable from other criminal proceedings. Appropriate coverage for civil law matters arising from family disputes requires comment however.

II. PUBLIC FINANCIAL SUPPORT FOR FAMILY LAW LEGAL SERVICES

Public financial support is presently provided for three broad categories of family law legal services:

(a) **Government Family Law Lawyer Services** which are family law lawyer services provided at public expense for the representation of some public interest as distinct from some private individual interest;

(b) **Family Law Legal Aid Services** which are family law lawyer services provided at public expense for the representation of some private individual interest;

(c) **Family Law Education, Advice and Information Services** which are provided as an adjunct to government or legal aid services in the family law field.

Chapter 5 discusses education, advice and information services in detail. Since the comments in that chapter are equally applicable in the family law context, this chapter discusses only government family law lawyer services and family law legal aid services.

III. GOVERNMENT FAMILY LAW LAWYER SERVICES

Government family law lawyer services include those provided by

(a) prosecutors proceeding under the Criminal Code in cases of alleged violence, abandonment or neglect where the defendant and victim are closely related,

(b) the Public Trustee bringing or appearing in civil proceedings pursuant to his statutory mandate,

(c) lawyers representing the Superintendent of Family and Child Service in protection proceedings under the Family and Child Service Act, in adoption matters or where the superintendent is legal guardian of a child and the child requires defence counsel services in a Young Offenders Act (Canada) proceeding, etc.,

(d) family advocates acting pursuant to section 2 of the Family Relations Act, and

(e) lawyers acting under an automatic enforcement of maintenance order provision of the Family Relations Act where the lawyer is representing a ministry or agency of the provincial government or is discharging a duty of the Attorney General.

Those persons involved in the provision of government family law public legal services, such as amicus curiae, family advocates, prosecutors, the Public Trustee, the Superintendent of Family and Child Service, and official guardians, provide a valuable service. It is recommended that the roles of these officers remain largely unchanged. While it is acknowledged that the appointment of family advocates under section 2 of the Family Relations Act should be

left with the Ministry of Attorney General, special care should be taken to ensure that in cases under the Family and Child Service Act the duty of the Attorney General to represent the superintendent does not conflict with the duty to provide family advocate services where warranted.

The mediation and conciliation services provided by family court counsellors, primarily in the Provincial Court setting, and increasingly in the Supreme Court setting, have important legal aid and legal information and advice implications. The family court counsellor is frequently the first court officer with whom an individual having a family problem comes into contact, and in many instances the counsellor refers individuals to the Legal Services Society. While family court counsellors are neither lawyers nor para-legals, they do provide a valuable service to the client which may result in reducing the client's need for legal services and thereby result in a cost saving measure. It is therefore recommended that the Legal Services Society encourage the use of family court counsellors where family law legal aid is being provided. Such mediation and conciliation services are increasingly available in the private sector as well.

IV. FAMILY LAW LEGAL AID SERVICES

Family law legal aid services, by contrast, include the matters set out below:

(a) Apprehension of Children

Representation of a parent or guardian of a child where the child is the subject of proceedings under the Family and Child Service Act.

(b) Custody

(i) Representation of adult parties in proceedings for guardianship of the person of a child or for custody of or access to a child.

(ii) Representation of a birth parent in adoption proceedings.

Generally, adoption proceedings are not adversarial in nature, and counsel for the Superintendent of Family and Child Service represents the interest of all parties and by inference those of the child. However, where the adoption is opposed or a birth parent wishes to maintain access and rights contrary to the wishes of the adopting parents, the representation needs of the intervening adversary party are analogous to the representation needs referred to in paragraph (b)(i) above and therefore are family law legal aid related.

(c) Patients Property Act, Wills and Trust matters, Mental Health Act, etc.

The Public Trustee or an official administrator act as guardians of the property or estate of minors and other legally incompetent persons and, as such, provide government family law legal services. There are, however, circumstances where individuals alleged to be incompetent to manage their own affairs or to be mentally ill or mentally retarded, within the meaning of the Mental Health Act, require legal representation or where the relatives of those individuals

require legal representation in proceedings under the Patients Property Act or the Mental Health Act or in related proceedings. These circumstances are a family law legal aid matter even though no dispute exists between the family members.

(d) **Family Violence**

Representation in civil proceedings where injunctive relief is sought (or opposed) to prevent contact with or harassment of one family member by another.

(e) **Maintenance**

The provision of legal assistance for abandoned wives and children, who are frequently forced to resort to public assistance to support themselves, can be shown to be a cost saving measure to the provincial treasury. In addition to providing basic social assistance, the provincial government pays for all medical and dental care for the children and from time to time makes "special needs" grants for the purchase of certain household items and "comfort grants" for the purchase of extras for the children. The objective of any maintenance program should be to render unnecessary the provision of social assistance to these individuals by providing legal counsel to act in proceedings to obtain or enforce maintenance payments.

The need for maintenance is often a central issue in a dispute and as such the need to resolve that issue as expeditiously as possible is often the key to stabilizing a family situation, thereby allowing the resolution over time of other outstanding issues. It is not within the terms of reference of the Task

Force to attempt to detail how an Automatic Enforcement of Maintenance Orders Program should be designed and implemented. Such a program would, however, reduce the need for family law legal aid and assist in the resolution of family disputes.

Therefore, with respect to maintenance, only those services not provided by an Automatic Enforcement of Maintenance Orders Program or a Reciprocal Enforcement of Maintenance Orders Program should be covered under the family law legal aid category. The legal representational needs of an Automatic Enforcement of Maintenance Orders Program or Reciprocal Enforcement of Maintenance Orders Program would become an aspect of government family law lawyer services.

Maintenance can be at issue in divorce proceedings, judicial separation proceedings, affiliation proceedings under the Child Paternity and Support Act, protection proceedings under the Family and Child Service Act or proceedings under the Family Relations Act. For legal aid purposes a distinction should be drawn, on the one hand, between the situations where the Crown is a party to the proceeding or is actively promoting litigation by the applicant for maintenance or where the Attorney General represents the party and, on the other hand, the situation where one or both parties is truly a private litigant. Where the Crown has an interest or the Attorney General has a role, a family law legal aid program does not apply to represent that interest or role.

(f) Divorce or Judicial Separation

Representation of a spouse in divorce or judicial separation proceedings where special circumstances apply such as when a spouse is continually harassed by another spouse to the point where his or her physical or mental health becomes affected, or where the legitimacy of a child requires a speedy divorce.

(g) Matrimonial Property

Representation of an individual claiming or opposing a claim against his or her spouse for a share of the matrimonial property is a family law legal aid matter.

It should be noted that in many of these claims where there has been a property settlement the financial eligibility of the spouse changes, and in appropriate circumstances, legal aid coverage is changed to a private retainer by the client or his or her solicitor.

It is recommended that representation described in each of the seven areas outlined above be considered essential services where provided to eligible individuals.

V. RELATED LEGAL AID AREAS NOT INCLUDED UNDER FAMILY LAW LEGAL AID

Two further areas might be considered elements of family law legal aid, but we exclude them for the reasons stated below:

(a) Representation of young persons charged under the Young Offenders Act (Canada) or the Young Offenders (British Columbia) Act

For legal aid purposes, this area is best considered in the criminal law context and is therefore covered in Chapter 1 of this report.

(b) **Defence Counsel services in criminal proceedings where the victim and defendant are members of the same family and violence, cruelty, neglect or the like is the basis of the proceeding**

While criminal proceedings in this context are often the criminal law response to the same circumstances that give rise to an apprehension under the Family and Child Service Act, or to a custody application, an application for injunctive relief or a divorce or judicial separation proceeding, there is no distinguishing factor of a family law nature that suggests that legal aid considerations in this criminal context should differ from those generally applicable to criminal proceedings where there are no family law issues. For legal aid purposes, this area is therefore covered by Chapter 1 of this report.

VI. DUTY COUNSEL

It is recommended that duty counsel be employed in the Provincial Court for coverage of all family law legal aid matters of a summary nature, including enforcement applications and maintenance applications on a first appearance basis. The advantages of using duty counsel in circumstances where this is the most effective and appropriate delivery model outweigh the case for administration of detailed eligibility tests. Where time is required to prepare for and conduct a trial, the applicant should be referred to the Legal Services Society and subjected to the Society's eligibility test. This is, in our

view, an essential service and is discussed in greater detail in a general context in Chapter 6.

VII. WHERE SHOULD THE RESPONSIBILITY FOR THE DEVELOPMENT AND DELIVERY OF FAMILY LAW LEGAL AID SERVICES LIE?

The responsibility for the development and delivery of most family law legal aid services now rests with the Legal Services Society. However, this responsibility to develop these services overlaps with certain programs of the Ministry of Attorney General, particularly insofar as the Ministry has traditionally provided some legal counsel services to private individuals engaged in child custody or family maintenance proceedings.

Because this overlap has in the past created ambiguity respecting the responsibility to develop and deliver services, the Task Force recommends that

(a) except where there is a public interest involved, the development of family law legal aid services should become the responsibility of the Legal Services Society and that the Ministry of Attorney General should withdraw from this function, and

(b) there be a corresponding reallocation of financial resources to the Legal Services Society from the Ministry of Attorney General insofar as the Society assumes responsibility for delivery of family law legal aid services presently provided by the Ministry.

It does not follow that the delivery of family law legal aid services and government family law lawyer services cannot, in some

situations, be integrated. In some instances, the delivery of services by both the Ministry of Attorney General and the Legal Services Society may be provided in the most effective and efficient manner by the two organizations working together. For example, it might well be that at many Provincial Court locations, the Legal Services Society and the Ministry of Attorney General would share the cost to retain a lawyer to act for the Automatic Enforcement of Maintenance Orders and Reciprocal Enforcement of Maintenance Orders Programs (currently the responsibility of the Ministry of Attorney General) and provide family law legal aid duty counsel services (a responsibility of the Legal Services Society).

VIII. SUMMARY OF RECOMMENDATIONS ON FAMILY LAW

1. No change in the roles in the family law context of amicus curiae, family advocates, prosecutors, the Public Trustee, the official guardians or the Superintendent of Family and Child Service is proposed. However, special care should be taken to ensure that in cases under the Family and Child Service Act the duty of the Attorney General to represent the superintendent does not conflict with the duty to provide family advocate services where warranted.

2. Where family law legal aid is being provided, the legal aid program should encourage the involvement of family court counsellors wherever practical.

3. An Automatic Enforcement of Maintenance Orders Program should be developed and instituted in British Columbia. The

provision would aid financially dependent spouses and children by removing the burden of litigation and by stabilizing family income distribution. It would decrease the need for family law legal services and save the province income assistance and social service costs.

4. The use of duty counsel to provide assistance in routine Provincial Court family law matters should be considered an essential service. The provision of assistance to unrepresented individuals in summary matters would improve the efficiency and effectiveness of the family court system and the family law legal aid program.

5. The services detailed in Part IV of this chapter should be considered essential services for eligible applicants for legal aid.

6. The Legal Services Society should have responsibility for the development of family law legal aid services. If the Society assumes responsibility for delivery of legal aid services in child custody or family maintenance areas, there should be a transfer of financial resources from the Ministry of Attorney General to the Society. The Ministry presently delivers these services.

7. The rationalization of responsibility for government family law lawyer services in the Ministry of Attorney General and of responsibility for family law legal aid services in the Legal

Services Society does not imply that the Ministry and Society could not establish joint service delivery efforts in particular communities or for particular matters. The Legal Services Society and the Ministry of Attorney General should work together where to do so would be most efficient and effective from the standpoint of each.

CHAPTER 3

CIVIL AND ADMINISTRATIVE LAW COVERAGE

I. INTRODUCTION

It should be noted that family law is primarily a branch of civil law, but because of its uniqueness and importance it has been the subject of the preceding chapter. Administrative law is similarly a branch of civil law.

II. BASIC RECOMMENDATION RESPECTING CIVIL AND ADMINISTRATIVE LAW COVERAGE

It is the recommendation of the Task Force that, whenever an individual's liberty, safety, health or livelihood is in jeopardy in a civil or administrative law context, the provision of necessary legal services to that individual in that proceeding be considered an essential public legal service.

III. DISCUSSION OF THE RECOMMENDATION

There are reasons why the provision of public legal services in the civil law field is limited in the foregoing manner. In most situations, the need for legal aid services does not arise. For plaintiffs, if a good cause of action exists, there will often be lawyers prepared to act on a contingency fee basis or in anticipation that they will be able to recover their fees out of the costs and damages awarded in the case. For potential defendants, if they meet the financial criteria necessary in order to qualify for legal aid, then it is unlikely they will be sued in many situations because a judgement awarded against them could not be recovered.

IV. SPECIAL ADMINISTRATIVE LAW COMMENTS

The Task Force received many forceful presentations and submissions to the effect that many individuals in the province who have claims in dispute pertaining to unemployment insurance, workers' compensation, criminal injuries compensation, veterans' benefits, immigration, pension benefits, insurance claims, social assistance benefits and the like require legal assistance but are not receiving it. Often, the amount involved in the case is so small and the area is so specialized and complex that no lawyers can be found who will take a case on the expectation of being paid out of the proceeds, yet the consequences to the claimant are most serious. The legislation, regulations and policies involved are frequently so complex that the average layman cannot properly present and argue his case. We are satisfied that the indicated concerns expressed to us have been adequately reflected in the recommendations set out in Chapter 6.

The Task Force notes that the Workers' Compensation Board is empowered by legislation to defray the necessary legal costs of claimants before the Board in certain circumstances. The Task Force therefore recommends that the Workers' Compensation Board be encouraged to exercise this power for claimants before the Board who would be eligible in light of the recommendations in Chapter 6.

There appears to be a special role for knowledgeable and dedicated para-legal personnel to provide essential public legal services in the administrative law area. The specialized knowledge and experience gained by such persons enable them, in many areas of administrative law, to provide service equal to or better than that of a lawyer who

does not specialize in the area. It is, therefore, an efficient and effective adjunct to the public legal service programs in the administrative law area for the Legal Services Society to employ such para-legals directly or to support other organizations who employ such persons. The Legal Services Society should foster the development of needed para-legal services and help to ensure that such para-legals have ready access to legal advice from lawyers where needed and to appropriate training courses and materials.

V. SUMMARY OF RECOMMENDATIONS RESPECTING CIVIL AND ADMINISTRATIVE LAW COVERAGE

1. Whenever an individual's liberty, safety, health or livelihood is in jeopardy in a civil or administrative law context, the provision of necessary legal services to that individual is essential where that individual is eligible pursuant to the recommendations in Chapter 6 of this report.

2. The Workers' Compensation Board should be encouraged to exercise the power given to it by legislation to defray the necessary legal costs of claimants appearing before the Board where such claimants meet the eligibility criteria outlined in Chapter 6 of this report.

3. The Legal Services Society should foster the development of needed para-legal services in the administrative law area and ensure that such para-legals have ready access to legal advice from lawyers where needed and to appropriate training courses and materials.

CHAPTER 4

NATIVE MATTERS

I. INTRODUCTION

In its travels throughout the province, the Task Force has had the benefit of submissions from many Native groups. From a careful consideration of these and other submissions, it is apparent that many members of the Native population of the province experience several unique problems in addition to those shared with other minority groups in the province and that their situation is unique from other cultural and linguistic communities requiring special attention. Due to the often exceptional social and financial problems of many Native persons the Task Force concluded that they have a special need.

II. CURRENT SERVICES

1. Native Programs Branch

The Native Programs Branch of the Legal Services Society is currently staffed by a director, a field worker and a secretary. Five Community Law Offices in Burns Lake, Masset, Skidegate, Hazelton and Merritt are funded by the Legal Services Society and operated by the local Societies whose directors are of Indian status or heritage. In addition the Legal Services Society provides funding for a para-legal in four of the twenty-one Native Friendship Centres in the province. The Task Force strongly endorses the need for the branch. Reductions in service levels have been sustained by the branch and in our view it is most important that the services and funding by the branch be restored to their former levels. The reductions have caused particular problems in the areas of family law, juvenile justice and legal problems unique

to Native people and it is recommended that, without impairment to the criminal legal aid program, greater priority be given to these areas.

2. Native Courtworkers

Since its inception in 1974, the Native Courtworker and Counselling Association has been jointly funded by both the federal and provincial governments. The association performs the indispensable function, particularly in the more isolated communities where the population is largely Native persons, of facilitating communications within and between communities. In these areas the serving of the whole community by the Native courtworker is conducive to harmony and the establishment of good will and trust.

The Native Courtworker program operates out of thirty-one locations across the province and in addition two prison liaison workers work with Native inmates in provincial correctional centres. At peak strength about two years ago, forty-two Native courtworkers provided client services through thirty-four locations; the number of courtworkers is now reduced to about twenty-five. This reduction is a matter of concern to the Task Force and there is, in our view, a very real need to rebuild the complement of courtworkers in the field to the level of two years ago and to restore funding to its former level.

Elsewhere in this report we have recommended the continuation and expansion of the function of Duty Legal Aid Counsel and, as the Native courtworkers fill a special need due to their close community involvement, we stress the importance of Duty Legal Aid Counsel working closely with them in the interests of the Native population.

3. Special Considerations

(a) Appeals

It was made apparent to the Task Force that it is common for many Native people to either not seek help or to give inadequate instruction to counsel before they plead to a charge or before a plea is made on their behalf. It is felt that the Native Programs Branch should be particularly diligent in monitoring cases where appeals should be considered, such as cases where individuals have in the first instance appeared without counsel or have provided inadequate instruction to counsel and a subsequent conviction or sentence calls for a re-appraisal. It is recommended that the Appeals Committee of the Legal Services Society, in consultation with the Native Programs Branch, address and attempt to redress any apparent miscarriages of justice. The Appeals Committee should be particularly sensitive to any such miscarriages which may have taken place in remote areas.

(b) Native Children

The Task Force is concerned with the situation of Native Indian children before the court in apprehension cases. Often in these cases the court is not given adequate information with respect to the resources which are available in the Native community to care for the child. Inadequate information may result in the segregation of the child from the community with attendant detrimental consequences for the child. This is an area in which family advocates should be particularly helpful and they should be alert and perceptive to such situations. Further, the local Band should be encouraged to give to the court its assessment of the child and to point out the alternatives which exist for the child in the Native community. In particular, the Native Courtworker Program should be extended to cover apprehension proceedings in the Family Court and a procedure should be found to give the Band standing at such hearings.

(c) Global Funding

The Legal Services Society now provides global funding to certain local societies which agree to provide legal aid coverage through Community Law Offices in a local community in accordance with eligibility criteria established by the Legal Services Society for the province. In Native communities where such arrangements can be made to the mutual agreement of both parties, the results can be very beneficial.

III. SUMMARY OF RECOMMENDATIONS RELATING TO NATIVE PEOPLES

1. The Task Force strongly endorses the programs of the Native Programs Branch and recommends that services and funding of the Community Law Offices and Native Friendship Centres be restored to their former levels.

2. The Native Courtworker Program performs a valuable and indispensable function in the Native Indian community and it is recommended that the complement of courtworkers in the field be restored to its level of two years ago and that funding be provided to make this possible.

3. The Appeals Committee of the Legal Services Society, in consultation with the Native Programs Branch, should address and attempt to redress any apparent miscarriages of justice. The Appeals Committee should be particularly sensitive to any such miscarriages which may have taken place in remote areas.

4. The Native Courtworker Program should be extended to cover apprehension proceedings in the Family Court and a procedure should be established to give the Band standing at such hearings.

5. The Task Force endorses the Legal Services Society global funding policy for local Native Indian communities where appropriate.

CHAPTER 5

SPECIAL CONSIDERATIONS

A. EDUCATION, ADVICE AND INFORMATION ABOUT THE LAW

I. INTRODUCTION

This section discusses ways of providing to individuals information and knowledge about their rights and obligations under the law other than what is provided through the solicitor/client relationship or through a para-legal and client equivalent to that relationship. The services encompassed by "education, advice and information about the law" are best considered under the subheadings

(a) Prevention and Self Help Services, and

(b) Legal Information and Education Services.

With reference to each of these two service areas, two issues, following an explanatory statement, are addressed:

(a) the rationale, if any, for supporting public funding of these services;

(b) where these services are publicly funded, in part or in whole, the manner in which the services should be provided and the public funding coordinated.

II. PREVENTION AND SELF HELP SERVICES

(1) Explanation

Prevention and self help services include information materials and summary advice presented in lay terms by lawyers, para-legals and other staff or volunteers where the advice or materials explain to individuals their rights and responsibilities and enable them to avoid or cope with a legal

problem. Major objectives of these services are to determine whether in fact legal assistance is necessary and if so to explain a legal process and how to prepare to participate in that process.

(2) **The Rationale for Supporting Public Funding of these Services**

Where prevention and self help services are developed and integrated in a careful and creative manner as an adjunct or an alternative to essential lawyer and para-legal services, the result can be a better total service package at reduced cost. This reflects the following:

(a) A lawyer's time is an expensive commodity. In those cases where the services of a lawyer are necessary, skillful use of well designed self help or explanatory materials by the lawyer, para-legal, staff person or volunteer can reduce the demand for the lawyer's time without loss in quality of service to the client. In fact, such an integrated approach can lead to an increase in the quality of the service.

(b) Where adequate self help materials and summary advice services are provided to individuals capable of coping adequately, those individuals assisted by the materials and advice may not require lawyer or para-legal services. This can be said not only of particular individuals in particular case situations, but also of whole areas of potential legal aid coverage.

It follows that insofar as prevention and self help services are an efficient and effective adjunct or alternative to essential legal aid services provided in a solicitor/client context, these prevention and self help services are themselves essential and thereby warrant public funding.

(3) **The Provision and Coordination of these Publicly Funded Services**

While the Legal Services Society or its funded agencies may be able to use materials prepared by other groups or may be able to refer an individual to other programs such as the Lawyer Referral Service of the Canadian Bar Association, the Society and its funded agencies cannot be solely dependant on outside sources to offset the need for prevention and self help services. The Society must have the mandate and resources to develop these services where it would be efficient and effective to do so in terms of its responsibility to provide essential legal services. The Society must also be prepared to work with other groups where appropriate to develop these services in the most cost effective fashion. It follows that

(a) prevention and self help services should be developed as an important aspect of the public legal service programs of the Society and must be seen as an ongoing management responsibility of the Society, and

(b) the funding of these programs is an integral part of the funding of public legal services generally provided through the Society.

III. LEGAL INFORMATION AND EDUCATION SERVICES

(1) Explanation

While prevention and self help services generally focus on specific problems experienced or anticipated by an individual in the context of a current or potential legal dispute, legal information and education services for the most part focus on a more general legal topic of ongoing interest or concern to people generally or to a specific group of people. Legal information and education services include education on legal topics for teachers and students in the public schools, in the adult education or outreach programs of the universities, colleges or provincial institutes and in the public libraries. The police, Bar and courts sponsor community programs to increase public awareness of various crime prevention and legal process topics. Various boards, tribunals and agencies of the federal and provincial governments sponsor similar programs to acquaint their users with those services.

Organizations such as the Vancouver People's Law School, the Legal Services Society, the Native Courtworker and Counselling Association and public libraries conduct adult education or outreach programs through the creation or distribution of learning materials and by offering lectures, workshops and similar learning activities for audiences interested in particular legal topics. Special need community groups also provide these services for specialized audiences, as do consumer rights, tenants' rights and other community and advocacy groups.

(2) **The Rationale for Supporting Public Funding of these Services**

It can be seen from the preceding paragraph that a range of organizations is engaged in the provision of legal information and education services and that each has its unique public, private or mixed public and private interest perspective for the service provided. Further, even where there is a discernible public purpose being served, that purpose may relate as much or more to a public education, employment or training social service or similar focus as to the administration of justice in the province.

The objectives of the Ministry of Attorney General, the Legal Services Society and the Law Foundation in funding organizations to provide these services or in providing these services directly are diverse and are to some degree unique from one another. The Law Foundation is directly mandated to fund organizations providing these services. The Legal Services Society also has a statutory mandate to fund other organizations or to provide the services itself, especially where to do so will improve the efficiency and effectiveness of its legal aid services or forestall demand for legal aid services. The Ministry of Attorney General funds organizations whose work increases public awareness of and support for the justice system and the rule of law.

The objectives outlined in the preceding paragraph continue to be valid and justify the continued public support for legal information and education services under the aegis of the

Ministry of Attorney General, the Law Foundation and the Legal Services Society where, and to the extent that, the services reflect those objectives and are provided in an efficient and effective manner.

(3) **The Provision and Coordination of these Publicly Funded Services**

It has already been noted that a broad spectrum of agencies are active in the provision of these services for an equally broad range of public, private and mixed public and private purposes. While it is in the interest of all concerned that unnecessary duplication of services be identified and lessened where it exists, this should not be at the expense of a proper reflection of the differing objectives that justify public support. Thus there is a legitimate continuing role for the public education system, the Ministry of Attorney General, the police, the courts and other provincial and federal government agencies in the provision of funding for these services and the provision of these services directly in appropriate circumstances. Similarly, private agencies active in the provision of these services through their own resources should not be restricted.

With reference to the coordination of public funding of these services, it is recommended that the Law Foundation, the Legal Services Society and the Ministry of Attorney General each clearly articulate its objectives in funding the provision of these services and that together they form a

committee to coordinate their funding activities in light of their statements of objectives. The proposed committee should endeavour to work closely with the federal Departments of Justice and Solicitor General and other federal, provincial and private agencies that are active in funding legal information and education service programs. By coordinating the efforts of its members and working in close liaison with other funding agencies the committee could streamline the process by which private agencies seek public funding for their legal information and education service programs and help prevent gaps or duplications in public funding support to those agencies for those services. The creation of this committee would simply advance and formalize the current coordination efforts of the Ministry, the Foundation and the Society.

IV. SUMMARY OF RECOMMENDATIONS RELATING TO EDUCATION, ADVICE AND INFORMATION ABOUT THE LAW

1. Prevention and self help services should be developed as an important aspect of the public legal service programs of the Legal Services Society and must be seen as an ongoing management responsibility of the Society.

2. The funding of prevention and self help services and programs should be regarded as an integral part of the funding of public legal services generally provided through the Legal Services Society.

3. In the provision and funding of legal information and education services there are continuing legitimate roles for the public education system, the Ministry of Attorney General, the police, the courts, other provincial and federal government agencies, public libraries and the Legal Services Society offices and funded agencies.

4. It is recommended that the Law Foundation, Legal Services Society and Ministry of Attorney General form a committee to coordinate their funding of legal information and education services so as to ensure the most effective and efficient application of funds.

B. PRISON LEGAL SERVICES

I. INTRODUCTION

Penitentiaries and lockups must be run within the confines of lawful authority and punishment. To do otherwise could be to engender a disrespect for society and its laws. Provision of legal services to prisoners is therefore necessary. Further, it is to the benefit of society and the prisoner to provide a peaceful means of solving the disputes that do arise in prisons, predominantly between the prisoner and the administration, in order to avoid prisoners resorting to violent means.

II. SERVICES

The staff of Prison Legal Services, consisting of two para-legals, one staff lawyer, one secretary and one consulting lawyer, is presently located at the Abbotsford Community Legal Services office and

provides regular legal clinics in nearby institutions. These institutions include Kent Maximum Security Institution, Mountain Prison at Agassiz, Mission Medium Security Institution, Matsqui Institution and the Regional Psychiatric Centre at Abbotsford. Services are also provided on request to Ferndale Camp and Stave Lake Camp at Mission, Haney Correctional Centre, Allouette River Camp and the Chilliwack Forest Camps. In addition, one para-legal works out of the Burnaby branch office at least three days a week and attends regularly at Lower Mainland Regional Correctional Centre (Oakalla), Lakeside Correctional Centre, Willingdon Youth Detention Centre and the Vancouver Pre-Trial Centre.

Services are provided by the lawyers and para-legals through regular clinics and prison attendances. These staff members provide prisoners with legal information on criminal and family matters, with the public legal education materials of the Legal Services Society where appropriate and with information and advocacy services on a wide range of other problems. Other problems typically include prison health, transfer, sentence calculation and visitation problems in addition to internal disciplinary charges in Warden's court and representation before the National Parole Board. Legal Services Society lawyers and para-legals also assist with applications for legal aid to appeal convictions and sentences.

The administrative law concept of "duty to act fairly" is expanding into the realm of decisions made by prison and parole officials and a large portion of the litigation conducted by the staff lawyer and the consulting lawyer arises in this area. Legal problems from outside

the prison include divorce, custody/access, adoption, criminal charges in other jurisdictions, immigration, and workers' compensation matters. The Prison Legal Services staff members also work with prison officials where possible to establish fairer methods of dealing with disputes within the prison and on occasion they are called in to negotiate potentially violent situations. They also conduct legal information seminars from time to time and have written for the Society's use in the province a number of public legal education pamphlets relating to recurrent prison legal problems.

The Prison Legal Services office does a great deal at minimum cost to provide these basic legal services to incarcerated individuals (approximately 2 000 people, excluding Riverview Mental Hospital). In Martineau v. Matsqui Institution Disciplinary Board (No. 2) (S.C.C.) (1980) 50 C.C.C. (2d) 353, a case which was brought by the now consulting lawyer to Prison Legal Services, Dickson, J. says at page 373:

> "In the case at bar, the Disciplinary Board was not under either an express or implied duty to follow a judicial type of procedure, but the board was obliged to find facts affecting a subject and to exercise a form of discretion in pronouncing judgment and penalty. Moreover, the board's decision had the effect of depriving an individual of his liberty by committing him to a 'prison within a prison'. In these circumstances, elementary justice requires some procedural protection. The rule of law must run within penitentiary walls."

Prison Legal Services works effectively towards this end which, in turn, should engender greater respect for the law by prison inhabitants.

III. SUMMARY OF RECOMMENDATIONS RELATING TO PRISON LEGAL SERVICES

1. It is recommended that staffing and funding of prison legal services be maintained at least at present levels.

CHAPTER 6

ELIGIBILITY FOR PUBLICLY FUNDED LEGAL SERVICES

I. INTRODUCTION

Chapters 1 through 3 describe the scope of publicly funded legal service coverage the Task Force thinks appropriate. Methods of best providing this coverage are discussed in Chapter 7. This chapter addresses the eligibility criteria to determine those individuals who should receive publicly funded legal services.

II. CORPORATE BODIES AND INDIVIDUALS

It is the recommendation of the Task Force that only individuals or groups of individuals should potentially be eligible to receive publicly funded legal services. Corporate bodies should be ineligible. Legal aid is properly addressed to the needs of individuals, not to statutorily created entities. However, where through a personal guarantee or by some other means an individual is personally liable for the obligations of a corporation, that individual should not be barred from receiving publicly funded legal services solely because his difficulties arise from his guarantor or similar status.

III. PROVISION OF SERVICES WITHOUT AN ELIGIBILITY TEST

1. Duty Counsel

The advantages in the family law context of using duty counsel are discussed in Chapter 2, and similar advantages in the criminal law context are described in Chapter 1. In Chapter 7, in discussing the best methods of providing publicly funded

legal services, the point is made that, through effective use of duty counsel, the Legal Services Society can increase the quality of services available to the court system and legal aid recipients respectively while reducing the cost of delivery of essential legal aid services. Paradoxically, to use duty counsel effectively and efficiently to this end, it is necessary that the Society be able to be flexible in the service coverage it allows duty counsel to provide and that duty counsel services be provided to individuals without the necessity of an eligibility test being employed.

2. **Prevention and Self Help Services, including Summary Legal Advice**

The nature and purpose of these services is discussed in Chapter 5 under the heading "Education, Advice and Information About the Law". Whereas duty counsel services are provided in an appearance or hearing before the Provincial Court, prevention and self help services provide assistance over the counter in lieu of legal aid to help a litigant prepare for trial, to avoid legal difficulties arising or to resolve legal disputes before trial. In order to provide prevention and self help services most efficiently and effectively and thereby reduce costs and increase the quality of essential services, it is appropriate that the Legal Services Society be able to provide prevention and self help services to individuals without the necessity of administering eligibility tests and without the necessity to rigidly adhere to service coverage limits.

IV. ELIGIBILITY FOR LEGAL AID SERVICES

1. Introduction

This part recommends eligibility criteria applicable to an applicant for publicly funded legal services other than for

(a) duty counsel services, or

(b) prevention and self help services.

The services to which this part applies are, in this part, termed "legal aid services".

This part does not deal with the priority of services but simply with the eligibility criteria that should apply where an individual requests a legal aid service provided by the Legal Services Society.

The basic eligibility criteria for the purposes of legal aid services can be best described under three headings:

(a) financial criteria,

(b) consequences criteria, and

(c) merit criteria.

The Task Force recommends that only the financial and the consequences criteria be applied where a legal aid applicant is charged with a criminal offence or is opposing the apprehension of his or her child by the Superintendent of Family and Child Service. For all other legal aid services (i.e. family law except child apprehension, administrative law or other civil law legal aid services), it is recommended that merit criteria be applied in addition to financial and consequences criteria.

In proposing the financial, consequences and merit criteria below, the Task Force is not by implication recommending that the Legal Services Society be bound to provide a legal aid service to an individual who meets the applicable criteria where, in the opinion of the Society, the provision of duty counsel services or prevention and self help services to the individual or the individual's own skills will suffice to reasonably ensure a fair trial or other fair determination of the legal matters at issue.

2. Financial Criteria

(a) Recommendations

Financial eligibility rules should be established from time to time by the Legal Services Society, and applications for legal aid services must, except when waived pursuant to section 3 below, come within the rules as a condition precedent to receiving aid. The rules should be flexible and be based upon whether a legal aid applicant can retain legal counsel at his or her own expense without the applicant or his or her dependants suffering undue financial hardships (for example, incurring heavy indebtedness, being required to dispose of modest necessary assets, or otherwise jeopardizing the ability to acquire the basic essentials of food, clothing and shelter). In this context, "modest necessary assets" mean assets which are directly related to the maintenance of one's sustenance, shelter, health, safety or livelihood, or those of one's family.

Where an applicant has a significant equity in an asset that is not a modest necessary asset, the Society must be in a position to rule the applicant ineligible to receive legal aid services.

Where an applicant has equity in a modest necessary asset and has an ability to borrow against it by way of mortgage or otherwise, sufficient to cover all or part of a lawyer's fee, the applicant should be required to do so to the extent that the applicant can service the debt without impoverishing himself or his family. In this context, impoverishment refers to the conditions noted with reference to the definition of "modest necessary assets".

(b) **Discussion of the Recommendations**

The principle of maintaining flexible financial eligibility rules is embodied in the federal/provincial cost sharing agreement for criminal legal aid and, as such, constitutes a contractual responsibility of the province in the criminal law context. It recognizes the need for a realistic assessment to be made of a person's actual ability to pay privately for essential legal services.

What is recommended above duplicates the rules applied by the Legal Services Society until October, 1982. We recommend a return to that standard.

In October, 1982, faced with a funding shortfall, the Legal Services Society attempted to reduce the population eligible for legal aid by substituting an inflexible test for family and criminal legal aid services based on a person's net monthly income. Basically, if such income exceeds amounts related to the national poverty levels, an individual does not qualify. The fixed income levels vary only for the size of the family dependent upon the income and the population of the area where the individual lives. A very limited discretion to move outside these rules is exercised by the Head Office in only the most serious cases.

The present test is related to the 1983 national poverty levels of income and has not been altered to reflect increases in the cost of living in 1984.

The Task Force has received persuasive representations from groups and individuals throughout the province that such a fixed test is unrealistic and falls short of meeting reasonable need.

3. Special Considerations Warranting the Waiving of the Financial Criteria

(a) Recommendation

Where an individual would not be eligible for legal aid services under the financial criteria, it is recommended that the individual should, nevertheless, be eligible for legal aid services where that individual

(i) cannot obtain the needed services from another source;

(ii) agrees to make a financial contribution, where possible; and

(iii) satisfies one or more of the following:

(A) has ethnic, cultural, linguistic or other special needs;

(B) is geographically isolated from legal services,

(C) has a case where the Legal Services Society has decided that the outcome could benefit individuals, the majority of whom would be financially eligible, and has determined that the case would not proceed without its involvement;

(D) is physically or mentally disabled and thereby unable to obtain legal services elsewhere; or

(E) is a member of a non-profit group or organization, where the services are determined to be in the interests of individuals, the majority of whom would be financially eligible.

(b) Discussion of the Recommendation

This recommendation is based on the present policy of the Legal Services Society. That policy recognizes the responsibility of the Society under section 3 (1) (a) of the Legal Services Society Act to ensure that services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons. The Task Force considers that it is important that this wider

responsibility continue to be recognized. The adoption of this recommendation is consistent with the terms of the federal/provincial cost sharing agreement for criminal legal aid.

4. **Consequences Criteria**

(a) **Recommendation**

The consequences criteria recommended by the Task Force can best be expressed in the form of a question: "In the situation faced by a legal aid applicant, is the liberty, safety, health or livelihood of the applicant or the applicant's dependants in jeopardy?"

(b) **Discussion of the Recommendation**

It would be desirable to provide legal aid to any individual who meets the financial criteria. If the Task Force were to recommend that only financial criteria need be met for an individual to qualify for coverage, then the cost of maintaining the resulting scope of legal aid services would be well beyond that which in Chapter 9 we project and recommend be accepted. It is for that reason that the consequences criteria are added.

In describing certain coverage as essential in Chapters 1, 2 and 3, we were guided by a consideration of which matters generally resulted in the liberty, safety, health or livelihood of individuals being in jeopardy. It follows that these same consequences criteria should apply when the determination is made, in particular situations, whether an individual should

qualify for a legal aid service within the scope of such coverage.

In short, these consequences criteria are employed both to define the scope of coverage and as part of the test to determine whether a particular individual is eligible to receive service within the scope of that coverage. In this way, the Task Force believes essential legal aid services can be best allocated to those who most need these services.

5. **Merit Criteria**

(a) **Recommendation**

The merit criteria recommended by the Task Force can best be expressed in the form of a question: "Would a prudent person of modest means in the legal aid applicant's situation retain a private practitioner with his or her own money to resolve the matters at issue?"

(b) **Discussion of the Recommendation**

The objective is to ensure that an individual who qualifies under the financial and consequences criteria will be disqualified if in his situation a prudent person of modest means would forego retaining a lawyer because of the expense this entails. Factors that would come under consideration by a prudent person of modest means would include: chance of success, whether the proceeding was being brought or defended for frivolous or vexatious reasons, and whether the reasonably anticipated benefits of the proceeding to the individual outweigh the cost of the proceeding.

6. An exception to the general recommendation respecting merit criteria

It is recommended that an exception to the merit criteria apply in the case of an individual whose dispute is with a government board or agency. In such a case, the Legal Services Society should have a discretion to allow an application for legal aid where the legal issues are of general significance but the balance of costs and benefits to a prudent person of modest means in the applicant's circumstances would not otherwise justify the provision of legal aid.

This recommendation recognizes that cases in the circumstances under discussion are often of minor financial benefit to a particular individual but may well lead to the establishment of an important precedent for all individuals collectively in similar circumstances. It also recognizes that, for this same reason, a board or agency may well devote substantial resources to pursue its goals in such situations - resources that a private individual would not expend - and it provides that the legal aid applicant in such circumstances will not be placed at an unreasonable disadvantage.

V. DISENTITLEMENT

Ten members of the twelve member Task Force are of the view that, notwithstanding qualification for coverage under the eligibility criteria enumerated in part IV of this chapter, there may exist circumstances that would disentitle an applicant to legal aid.

Individuals in this category are multiple users of the system who appear to be abusing it. Only in exceptional circumstances should those in this category receive legal aid. The discretion to determine whether a particular applicant falls into this category and, if he or she does fall into this category, whether exceptional circumstances nevertheless exist, must rest with the Legal Services Society.

The Task Force considered well reasoned arguments that would suggest that disentitlement on the indicated basis could nevertheless result in unfairness to the defendant, cause delays in the court system and be more costly in the long run. It was, however, the view of the majority that availability of the service should not be seen as a bottomless pit open to all comers who meet the standard eligibility tests. Not only is there an inherent objection to extending publicly funded services to multiple users who appear to be abusing the system, but public confidence in the system and the maintenance of its credibility necessitate the need for the application of the indicated discretion. Further, there comes a time when scarce resources could be better utilized by others considered to be more deserving.

Messrs. Adamson and Jacobsen dissent from the views expressed under the Disentitlement section of this chapter. Their position is stated in Minority Opinion Number 1.

VI. CLIENT CONTRIBUTION, REPAYMENT SCHEME AND PRIVATE RETAINERS

1. Client Contribution

(a) Recommendation

It is recommended that at the time service is received, a recipient of legal aid be required to contribute part of the cost of that service to the extent that he or she is able without impoverishing the recipient or the recipient's family.

(b) Discussion of the Recommendation

For an eligibility test to be realistic, various degrees of qualification should be recognized. It is unreasonable for eligibility to be determined on an "all or nothing" basis. Where according to the financial eligibility criteria an individual cannot pay the full cost of essential legal services, he should be entitled to legal aid but should also be required to contribute as much as possible at the outset and during the course of the proceedings.

The Legal Services Society collected approximately $190 000 in client contributions in fiscal year 1983/84 during which time it was applying a fixed eligibility test. It should be possible to increase this amount considerably on the introduction of flexible financial eligibility criteria.

2. Repayment Scheme

(a) Recommendation

It is recommended that, insofar as these measures are consistent with provincial recoveries under cost sharing arrangements with the federal government:

(i) A recipient who is unable to borrow money against the value of a "modest necessary asset" should nevertheless be required to grant a non-interest bearing lien against such assets in favour of the Legal Services Society for the total cost of the legal services provided. This lien would be discharged by payment of all or part of the amount of the lien, at the sole discretion of the Legal Services Society, at the time that the asset is sold or refinanced.

In exercising this discretion, the Society should consider the need of the recipient to retain or replace the asset. A statutory scheme for the registration of such liens against motor vehicles or real estate should be put in place.

(ii) Recipients of legal services should be required to sign a statement of indebtedness to the Legal Services Society for the full cost of legal services provided. The indebtedness should be collected, in whole or in part, at the sole discretion of the Legal Services Society.

(b) Discussion of the Recommendation

There was widespread agreement among those addressing the Task Force at its public hearings that recipients of public legal services should be required to repay the cost of those services in the future if they had the ability to do so. It was clear also that this would be the wish of most recipients.

Where administered fairly and sensibly, a repayment scheme could achieve the public purpose of discouraging some misuse of legal aid while giving the legal aid recipient an opportunity to settle his account at a later date. However, a wide discretion must be exercised by the Society to ensure fairness and not oppression in the operation of the scheme. Further, in developing its collection policy, the Society should recognize the utility of writing off or reducing uncollectible debts within a reasonable time and balancing the noted public purpose against what might be unreasonable collection costs.

3. Private Retainers

It is recommended that the Legal Services Society should continue to make every effort to refer appropriate cases to the Bar for the provision of legal services on a private basis by way of contingency fee, deferred fee, reduced fee, lien on property, pro bono publico or otherwise. It is important that cases which can be handled privately are not absorbed by the legal aid system merely because it is accessible.

VII. APPEALS

Where an individual requests legal aid to advance or defend his or her interests before the appellate courts, the same eligibility criteria should generally apply, with the necessary changes, as would apply where legal aid is requested in the matter before the trial court.

The Legal Services Society must, however, be satisfied that there is substantial merit in the appeal before coverage is extended.

VIII. SCREENING FOR ELIGIBILITY

It is recommended that the Legal Services Society should continue its program of screening for eligibility, including;

(a) the taking of a signed financial statement from applicants,

(b) spot checks on the accuracy of the information given,

(c) in-depth investigation of suspicious or unusual cases and most cases involving drug trafficking and commercial fraud, and

(d) retention of the requirement that lawyers providing services under the tariff monitor the financial circumstances of the client and report any ability to pay all or part of the private fee to the Society so that, where appropriate, a contribution, repayment or full private fee can be required.

IX. SUMMARY OF RECOMMENDATIONS RESPECTING ELIGIBILITY

1. Only individuals and not corporate bodies should be eligible to receive publicly funded legal services.

2. Duty counsel and prevention and self help services should be provided by the Legal Services Society in lieu of legal aid services wherever doing so will increase the quality of essential legal service delivery and reduce the cost of that delivery. The Legal Services Society must be able to provide these services without the necessity of administering eligibility tests or adhering to rigid service coverage limits.

3. Only the financial and the consequences criteria set out in this chapter should be applied where a legal aid applicant is charged with a criminal offence or is opposing the apprehension of his or her child by the Superintendent of Family and Child Service.

4. For all legal aid situations other than those described in recommendation 3, merit criteria should be assessed in addition to financial and consequences criteria.

5. The recommendation of financial, consequences and merit criteria does not imply that, where an individual meets these criteria, he or she is entitled to legal aid services where, in the opinion of the Society, the provision of duty counsel services or prevention and self help services to the individual or the individual's own skills are sufficient to reasonably ensure a fair trial or the fair determination of the legal matters at issue.

6. Financial eligibility rules established by the Legal Services Society should be flexible and be based on whether a legal aid applicant can retain legal counsel at his or her own expense without the applicant or his or her dependants suffering undue financial hardships. Every application for legal aid services must come within these rules as a condition precedent to receiving aid, except when waived pursuant to recommendation 9 below.

7. Where an applicant has a significant equity in an asset that is not a modest necessary asset, the Legal Services Society, in its discretion, should be able to find the applicant ineligible to receive legal aid services.

8. Where an applicant for legal aid services has equity in a modest necessary asset and has an ability to borrow against it to cover all or a part of a lawyer's fee, the applicant should be required by the Legal Services Society to do so to the extent that the cost of servicing the resulting debt will not impoverish the applicant or his or her family.

9. Where an individual would not be eligible for legal aid services under the financial criteria, it is recommended that the individual should nevertheless be eligible for legal aid services where that individual:

   (a) cannot obtain the needed services from another source;

   (b) agrees to make a financial contribution where possible; and

   (c) satisfies one or more of the following:

      (i) has ethnic, cultural, linguistic or other special needs,

      (ii) is geographically isolated from legal services,

      (iii) has a case where the Legal Services Society has decided that the outcome could benefit individuals, the majority of whom would be financially eligible, and has determined that the case would not proceed without its involvement,

(iv) is physically or mentally disabled and thereby unable to obtain legal services elsewhere, or

(v) is a member of a non-profit group or organization, where the services are determined to be in the interests of individuals, the majority of whom would be financially eligible.

10. The consequences criteria recommended by the Task Force can best be expressed as a question: "In the situation faced by a legal aid applicant, is the liberty, safety, health or livelihood of the applicant or the applicant's dependants in jeopardy?"

11. The merit criteria recommended by the Task Force can best be expressed as a question: "Would a prudent person of modest means in the legal aid applicant's situation retain a private practitioner with his or her own money to resolve the matters at issue?"

12. An exception to the merit criteria arises in the case of an individual whose dispute is with a government board or agency. In such a case, the Legal Services Society should not disallow an application for legal aid where the legal issues are of general significance but the balance of costs and benefits to a prudent person of modest means in the applicant's circumstances would not otherwise justify the provision of legal aid.

13. Notwithstanding qualification for coverage under the eligibility criteria, there may exist circumstances that would

disentitle an applicant to legal aid. Individuals in this category are multiple users of the system who appear to be abusing it. Only in exceptional circumstances should those in this category receive legal aid. (Two Task Force members disagree with this recommendation.)

14. A recipient of legal aid services should be required to contribute all or a part of the cost of those services at the time the services are received except to the extent that this contribution would impoverish the recipient or the recipient's dependants.

15. Insofar as these measures are consistent with provincial recoveries under cost sharing arrangements with the federal government:

(a) A recipient who is unable to borrow money against the value of a "modest necessary asset" should nevertheless be required to grant a non-interest bearing lien against such assets in favour of the Legal Services Society for the total cost of the legal services provided. This lien would be discharged by payment of all or part of the amount of the lien, at the sole discretion of the Legal Services Society, at the time that the asset is sold or refinanced.

In exercising this discretion, the Society should consider the need of the recipient to retain or replace the asset. A statutory scheme for the registration of such liens

against motor vehicles or real estate should be put in place.

(b) Recipients of legal services should be required to sign a statement of indebtedness to the Legal Services Society for the full cost of legal services provided. The indebtedness should be collected, in whole or in part, at the sole discretion of the Legal Services Society.

16. The Legal Services Society should continue to make every effort to refer appropriate cases to the Bar for the provision of legal services on a private basis by way of contingency fee, deferred fee, reduced fee, lien on property, pro bono publico or otherwise. It is important that cases which can be handled privately are not absorbed by the legal aid system merely because it is accessible.

17. Where an individual requests legal aid to advance or defend his or her interests before the appellate courts, the same eligibility criteria should apply, with the necessary changes, as would apply where legal aid is requested in the matter before the trial court. The Legal Services Society, however, must be satisfied that there is merit in the appeal.

18. The Legal Services Society should continue its program of screening for eligibility, including

(a) the taking of a signed financial statement from applicants,

(b) spot checks on the accuracy of the information given,

(c) in-depth investigation of suspicious or unusual cases and most cases involving drug trafficking and commercial fraud, and

(d) retention of the requirement that lawyers providing services under the tariff monitor the financial circumstances of the client and report any ability to pay all or part of the private fee to the Society so that, where appropriate, a contribution, repayment or full private fee can be required.

MINORITY OPINION NUMBER 1

ISSUE: SHOULD REPEATED PRIOR USE OF LEGAL AID SERVICES BE A GROUND UPON WHICH TO DENY LEGAL AID TO AN ELIGIBLE INDIVIDUAL?

In Chapter 6 a majority of the Task Force recommended that:

> Notwithstanding qualification for coverage under the eligibility criteria, there may exist circumstances that would disentitle an applicant to legal aid. Persons in this category are multiple users of legal aid who appear to be abusing it. Only in exceptional circumstances should those in this category receive legal aid.

We, the remaining two members, do not concur in this recommendation. We have seen no evidence that abuse exists of a nature and to an extent that would justify the implementation of this recommendation. Conversely, unnecessary erosion of the principle of equal access to justice may result from efforts to implement the recommendation.

There are a number of specific problems we see with the recommendation:

1. **The recommendation does not define "abuse" or justify why such abuse should disqualify eligible applicants from receiving legal aid.** Everyone is against a proven abuse and would favour reasonable measures to eliminate such abuse. Unless one is able, however, to pinpoint the nature and degree of abuse and indicate why it justifies denying essential legal aid services to eligible individuals, the case is not made that a basis exists to take the serious step of denying such services to such individuals.

We appreciate that the recommendation itself contemplates that there could be special circumstances in which services would not be denied to repeat users. The nature of these special circumstances is not, however, elaborated upon in the recommendation.

2. **The recommendation appears to be based on the assumption that where an individual has qualified for and received legal aid on several past occasions and is again applying for further legal aid, this in and of itself constitutes an abuse of the legal aid system justifying the denial of further services to that individual.**

The Task Force report recommends that the legal aid program cover only criminal law or family, administrative and other civil law matters where the liberty, safety, health or livelihood of individuals will normally be in serious jeopardy. The eligibility criteria recommended in the report likewise specify that only individuals who, in fact, cannot afford to retain necessary legal counsel and are, in the absence of legal aid services, in jeopardy of loss of liberty, safety, health or livelihood (or whose dependants are in such jeopardy), will receive legal aid. In the civil law areas there are further exclusionary criteria based upon the merit of the individual's case. Based upon such coverage and eligibility criteria, we cannot see how a further general exclusionary test can be imposed without an unjustified erosion occurring to the principle of equal access to justice.

The implications of Section 15 of the Canadian Charter of Rights and Freedoms would have to be considered as well in this context.

3. **It appears that any meaningful attempt to implement this recommendation will lead to unwarranted cost and red tape.**

If the Legal Services Society were to establish and administer a disentitlement policy based upon this recommendation, this would necessarily require the maintenance of a recordkeeping system readily accessible on a province-wide basis beyond what would otherwise be required. Further, it would be cumbersome and costly to evaluate each applicant for legal aid in terms of:

(a) repeated use of legal aid services, and

(b) any special circumstances that might override the presumption that a repeat user should be disqualified.

CHAPTER 7

METHODS OF PROVIDING LAWYER AND PARA-LEGAL SERVICES TO CLIENTS

I. INTRODUCTION

The Task Force reviewed the modes by which lawyer and para-legal services are provided by legal aid plans in several jurisdictions in Canada and abroad. It was considered whether a factual basis existed for concluding that one mode or combination of modes was inherently superior to any other.

Special observations can be made respecting the utility of employing duty counsel, para-legals and courtworkers in order to minimize the costs and maximize the efficiency and effectiveness of any program for the provision of lawyer services in an on-going solicitor/client context. These observations will be made in Part III after a discussion in Part II of the available modes of providing lawyer services.

II. MODES OF EMPLOYING LAWYERS

A distinguishing feature of the relationship of lawyers to their clients in the legal aid context in comparison to most other solicitor/client relationships is that a third party, the Legal Services Society, arranges to pay for the services and, in doing so, necessarily constrains the availability and use of the service by the client. While this gives flexibility to the legal aid plan in considering what mode or modes of lawyer service delivery to use, it requires that the legal aid plan take care that the resulting solicitor/client relationship inherent in its program of legal aid does not substantially differ for legal aid recipients in comparison to clients who directly retain their own lawyers.

This point about the need to protect the quality of the solicitor/client relationship having been made, the modes available to the Legal Services Society for retaining lawyers are the same as those available for any large scale employer of legal services. They are as follows:

(a) rely upon private practitioners and retain these on a case by case or ad hoc basis as needed;

(b) rely upon private practitioners and retain these on a continuing contractual basis to act in all cases that fall within an agreed upon category;

(c) rely upon staff lawyers;

(d) use modes (a) and (b) together;

(e) use modes (a) and (c) together; or

(f) use modes (a), (b) and (c) together.

In addition to the need to protect the quality of the solicitor/client relationship, factors of geography, volume of demand for lawyers' services and the availability of lawyers to meet this demand must also be assessed in order to determine which of options (a) to (f) is most appropriate in a given situation. It follows that, on a province-wide basis and with reference to the full spectrum of civil, family, criminal, young offender and administrative law cases that arise, it would be too restrictive to limit the Legal Services Society to options (a), (b) or (c) to the exclusion of other possible choices. It likewise follows that option (f) is preferable to options (d) or (e) insofar as it allows the Legal Services Society to serve the needs at particular locations with the maximum flexibility. Further, research in B.C. and elsewhere indicates that there is no intrinsic cost advantage in choosing one option over another.

In summary, while the use of ad hoc, contract or staff counsel may be most cost effective and efficient as well as most effective in terms of service delivery in a particular type of case for a given category of client in a chosen location at a given point in time, it does not follow that one of these modes of retaining lawyers is inherently superior for all cases, clients and locations on a continuing basis. The responsibility for maintaining the quality of the solicitor/client relationship in the legal aid context and of providing lawyer services in a cost effective manner and with efficient and effective service delivery should be vested in the Board of the Legal Services Society. They should be left with the discretion to choose how best to provide these lawyer services to legal aid clients as circumstances require.

III. DUTY COUNSEL, PARA-LEGAL AND COURTWORKER SERVICES

Wherever an appreciable number of persons financially eligible for legal aid are likely to appear unrepresented at a hearing or at trial in the family court or criminal court context, duty counsel should be provided to

(a) represent such persons where extensive pre-trial preparation is not needed, or

(b) seek an adjournment, release on bail, or whatever other interim measures are needed in order that such persons can obtain legal aid before trial.

Duty counsel is a cost effective means of ensuring that essential legal services are provided in a timely fashion and that the need for more costly services at a later stage at or after trial does not arise. Duty counsel also serve an analogous need in remote locations.

Para-legals having skill, experience and dedication and having ready access to a lawyer for advice can help in many situations, particularly in the administrative law, family law and civil law contexts, by helping persons to organize their facts and documents and to understand the applicable procedures and the basic outline of the applicable law. Such help can adequately substitute in some situations for the need for direct lawyer services and in other situations where such para-legal services are confined to particular aspects of the case.

Earlier in this report the work of the Native Courtworkers was described. Other agencies besides the Native Courtworker and Counselling Association provide courtworker services to men and women in the criminal court context. Courtworkers are valuable where they can work in concert with duty counsel or where a particular client population is at a disadvantage in seeking legal aid, in being adequately advised or in properly instructing legal counsel because of language or cultural barriers.

Duty counsel, para-legal and courtworker services are also discussed elsewhere in this report. Where such services can be employed, this often results both in a reduction in the need for direct services of legal aid lawyers and in an improved service to clients, including an improvement in the service from lawyers. It follows that the Board of the Legal Services Society should:

(a) consider the development of the duty counsel and para-legal aspect whenever plans are being developed to provide direct lawyer services; and

(b) work closely with agencies responsible for the development of courtworker programs.

IV. RECOMMENDATIONS

1. There is no single mode of delivery of legal serivces that is inherently more effective and efficient in all cases at all times. It is therefore recommended that the Board of the Legal Services Society be vested with the flexibility and discretion to determine how to best provide lawyer services to legal aid clients as suggested by particular circumstances.

2. The Task Force recognizes the valuabie role of duty counsel, para-legals and courtworkers as an effective and efficient means of providing and augmenting the delivery of essential legal services. It is recommended that the Board of the Legal Services Society preserve these services as an integral component in the delivery of legal aid services.

CHAPTER 8

THE TARIFF - MAJOR COST FACTOR

I. INTRODUCTION

This chapter outlines the difficulties experienced under the current tariff of fees and makes recommendations to stabilize the situation in the middle term and place the tariff system of paying for needed legal aid services on a sound footing over the long term.

In Chapter 7, the observation was made that a realistic comparison of the three modes of retaining lawyers to provide necessary legal services with which to run a legal aid program, i.e.,

(a) private practitioners acting on an ad hoc case-by-case basis for a fee under a tariff,

(b) private practitioners acting under a full or part time continuing-contract-for-service basis, and

(c) staff lawyers employed on salary,

indicated no inherent advantage of one mode over another from the standpoint of the cost of service delivery and of the quality of service provided. The recommendation was therefore made in that chapter that the Legal Services Society, as part of its management responsibility, remain free to select from these three modes in order to maximize service and minimize cost as the situations in the various community and service areas throughout the province indicated. For the foreseeable future, the likely consequence of this policy will be a continued general reliance on mode (a) above, augmented by modes (b) and (c) in selected circumstances. It follows that a sound tariff of fees is a key element in the maintenance of a viable legal aid program throughout the province.

II. THE PROBLEMS CURRENTLY EXPERIENCED UNDER THE BRITISH COLUMBIA TARIFF SYSTEM

Over the years, the legal profession has played a paramount and indispensible role in the development and delivery of legal aid services in the province. The Task Force is mindful of the continuing acknowledgment by members of the Bar of the desirability that all persons, whatever their financial circumstances, have equal access to basic legal services.

The provincial government together with the federal government and the Law Foundation of British Columbia have been in partnership, through the contribution of money to the Legal Services Society and its predecessor organizations, with the legal profession in sustaining the legal aid program in the province over the years. The lack of change in an increasingly outdated tariff reflects a major shrinkage over recent years in the proportional value of the contribution of the funding partners compared to that of lawyers in the form of services they contribute to the legal aid program. It is fairly estimated that between $21 million and $25 million worth of legal services are currently provided annually by lawyers above and beyond the value of legal and administrative services paid for by the contributions of the two levels of government and the Law Foundation. These three funding partners currently contribute about $16 million annually to the Legal Services Society. The lawyers, in addition to the value of services for which they receive fees or salaries from that $16 million, contribute the further $21 million to $25 million in the form of pro bono services to clients, or in the form of the differential between the fees they receive under the legal aid tariff and the fees for

corresponding work they would receive from paying clients of modest means.

Another factor that must be appreciated, in relation to this $21 million to $25 million worth of services provided without compensation by the legal profession, is that it is largely provided by private practitioners in the family and criminal law fields who constitute only a fraction of the total number of lawyers practicing in the province. The family and criminal law private practitioners acknowledge and take pride in their traditional role of providing to individuals necessary legal services for which no fee or only a partial fee can be obtained. There is every indication, however, that the capacity of these private practitioners to maintain, let alone increase, the value of services they contribute without compensation is under great strain.

Analyses undertaken by the Task Force and submissions made to it indicate that in most types of cases, where comparisons are possible, fees paid to lawyers in private practice in British Columbia for the conduct of legal aid cases are the lowest in Canada. An inadequate tariff is of serious concern to the Task Force, not so much because of its effect on the economic welfare of the legal profession, but because of the genuine threat it presents to the quality of publicly supported legal aid for those who seek and require it.

Dangers that threaten the continued provision of competent and credible legal aid include:

1. The refusal by some experienced lawyers to accept the serious and complex cases which require their particular levels of skill. This has a special impact outside of the larger communities of the province.

2. The acceptance of legal aid cases by lawyers who are not able to afford sufficient time for the preparation of each case.

3. The development of a two tiered system of legal services in the province: one, where adequate representation is provided to paying clients and the other, legal aid, where clients receive inadequate representation.

4. Inadequate representation which can lead to significant wastage within the justice system in terms of the delays and backlogs and inefficient use of court, police and prosecutorial resources as well as unnecessary increases in correction system costs.

Table 1 sets out examples to indicate the seriousness of the gap that has developed between British Columbia and the other provinces with similar plans respecting the amount of tariff paid to private lawyers for legal aid.

Table 1

INTER-PROVINCIAL TARIFF COMPARISONS SUMMARIES[1]

		British Columbia	Alberta	Manitoba	Ontario	
A.	Average Cost/Case[2]					
	1. Criminal	$ 242	$ 412	$ 348	$	523
	2. Family	249	378	307		523
B.	Trial Examples					
					Jr.	Sr.
	1. Criminal					
	a) murder[3]	5,928	13,464	11,050	9,324	10,676
	b) lesser indictable[4]	832	1,660	1,375	1,274	1,617
	c) most summary[5]	206	280	375	331	331
	d) murder conviction appeal[6]	700	1,830	1,200	1,152	1,438
	2. Family Contested Custody[7], Property and Divorce	757	1,020	1,160	2,322	2,850

Notes:

1. These provinces were chosen because of their size and the similarities to the B.C. legal aid plan.
2. From 1982/83 Annual Reports.
3. 5 Day preliminary hearing and 20 day trial.
4. 1 day preliminary hearing and 3 day trial.
5. ½ day trial.
6. Conviction Appeal, 2 day hearing.
7. Including ½ day contested application, ½ day discovery, 2 day hearing.

While this Table demonstrates the relative inadequacy of the criminal and family law tariff in British Columbia, the Task Force received submissions suggesting that lawyers have been undertaking family law cases that gross as little as $8 to $15 per hour. The fees received by lawyers acting in such circumstances come nowhere close to covering their basic office administration costs, let alone permitting them some modest return on efforts expended.

This problem of the inadequacy of the tariff is magnified as a consequence of the absence of annual or even biennual reviews. Since 1973, the tariff level has increased by only 40%, while, for example, the Consumer Price Index for Vancouver has increased by 146.5%.

III. A NEW TARIFF - RESTORING THE PARTNERSHIP

It is the view of the Task Force that, as a matter of principle, the ultimate goal must be to ensure that individuals who are eligible for legal aid coverage are to be represented by legal counsel who are paid a reasonable fee. Otherwise, in the medium to long term, the legal aid delivery system will suffer a major crisis.

1. The Long Term Goal

To meet this ultimate goal and at the same time to continue the important, worthy and essential tradition of the legal profession in giving support to those who cannot, for financial reasons, underwrite their own legal costs, the Task Force recommends a fee concept based on:

(a) recovery of lawyer's overhead (on average, 50% of total legal fees collected from private clients by private practitioners is applied to cover overhead); plus

(b) one-half of the balance of fees that a lawyer would normally charge a paying client of modest means.

The resultant fee schedule would therefore represent a "75% rule", resulting in a fee schedule approximately 25% below fees that an average lawyer would charge a paying client with modest means. Importantly, a tariff system developed on this principle continues the historic tradition of the Bar in providing legal services to those whose financial means would otherwise preclude access to those services. It is a tradition and an obligation that is recognized and willingly accepted by the Bar. It should be remembered that, in addition to the legal aid services covered by the tariff to which the 75% rule would apply, the private Bar would continue to augment the legal aid program in a major way through the provision of pro bono services.

The implementation of the 75% rule should ensure that the services of experienced and competent legal counsel would be available wherever needed in the province to provide the full range of essential legal aid coverage to eligible individuals described in earlier chapters of this report in favourable as well as unfavourable economic conditions.

A major impediment to the immediate implementation of the 75% rule is that the funds are not currently available to the

Legal Services Society to support such a revised tariff, and, even with the full utilization of the recommendations set out in Chapter 10, it is not possible at the present time to predict a date by which full implementation of the 75% rule could be achieved.

Implementation of the 75% rule will also require the development of current, accurate and verifiable indices which do not now exist in this province with which to characterize

(a) who is an "average lawyer",

(b) who is "a client of modest means",

(c) what "services" are analogous to those provided through legal aid, and

(d) what resultant schedule of fees should exist for legal aid work.

The Task Force has made general assessments based on its knowledge of current practice in the province. These assessments, coupled with our own understanding of the work of the Bar, generally allow us to conclude that the 75% rule is equitable and that it would create long term stability. However, the Task Force could not translate these assessments into the sort of indices referred to above in the absence of significant further work in the form of surveys and other research and consultation with the Law Society, the Canadian Bar Association, the Ministry of Attorney General and other interested parties. This work would take a number of months to complete. We recommend that the indicated bodies commence collaboration on the matter at an early date.

The Task Force therefore recommends that the long term goal of the funding bodies of the Legal Services Society be to enable the Society to implement a tariff structure reflecting the 75% rule. Over the next eighteen months (the middle term goal) however, we recommend that an interim tariff be devised and implemented by the Legal Services Society with the cooperation of the traditional funding bodies of the Society. The nature and reasons for this middle term course of action are set out in the next section of this chapter entitled "The Middle Term Goal".

It is proposed that after the middle term goal has been achieved, the goal of implementing the 75% rule is to be achieved in stages as increased funds become available for that purpose. The process would entail annual reviews of the tariff thereafter by the Legal Services Society following the usual consultation process.

2. The Middle Term Goal

Achieving the 75% rule would require an increase well in excess of 100% of the existing legal aid tariff. The Task Force believes that, in the current economic environment, a minimally sufficient amount of quality legal services will continue to be provided through the Legal Services Society by private practitioners throughout the province provided that, as soon as practicable within the next eighteen months, the legal aid tariff is increased approximately 70% on average. It is the responsibility of the Legal Services Society to carry out

appropriate consultations and to establish from time to time the applicable legal aid tariff schedule of fees. The level of this tariff will be influenced in large measure by the funds available and by the willingness of lawyers to act. The Task Force therefore thought it inappropriate to suggest a detailed schedule of fees for inclusion in a new interim tariff or to propose when and in what manner the new interim tariff would be implemented. We do however, indicate the need for a 70% average tariff increase within eighteen months in the belief that:

(a) an increase in the order of 70% on average is necessary if the reasonable overhead costs of private practitioners for their legal aid work are to be substantially met in most cases. It is important to note that even with a 70% increase it cannot be concluded that all such overhead costs would be met;

(b) an increase in the annual budget of the Legal Services Society for tariff items of this order of magnitude could be achieved given

  (i) the alternative funding recommendations set out in Chapter 10, and

  (ii) the level of essential public legal services recommended by this report; and

(c) the necessary supply of lawyer services to provide the level of essential public legal services recommended by this report could be maintained in the middle term provided

(i) the legal aid tariff was adjusted in the middle term by the 70% increment to more properly defray the overhead expenses incurred by lawyers insofar as these expenses are properly attributable to their legal aid work; and

(ii) there is a clear indication that the 75% rule will be phased in as soon as practicable, and to this end, there will be an annual review of the adequacy of the tariff.

IV. THE STRUCTURE OF THE TARIFF SYSTEM

As previously noted, a large part of legal aid services to eligible clients in the criminal and family law areas is provided by lawyers in private practice. Payments are based on the tariff which has just been discussed and which establishes the amounts paid for specified types of services. The basis of the present tariff structure for criminal and family law fees in British Columbia is a "block". This means that the fees for pre-trial attendances, preparation and court appearances are generally included in a block payment with the fees for the first half day of trial. After that, lower half day fees are paid to reflect trial time only.

The Task Force heard a number of submissions with respect to the existing tariff structure and has determined that in most cases the current structure has considerable merit for the following reasons:

(a) Administrative Simplicity

Compared to an hourly rate system where various types of services are compensated at set hourly rates up to a maximum number of hours, the administration of a block system is much simpler. As well, a study of the hourly rates paid under the Ontario Legal Aid Plan showed that, after taxation, the fees were almost as high as the maximum amounts allowed.

(b) Decreased Trial Costs

Because the block tariff covers pre-trial attendances, it acts as a deterrent from delaying the commencement of the trial. As well, because the first half day fee includes a block for preparation, subsequent one half days are compensated at a much lower rate. For example, under the existing tariff, a fee of $235 is paid for everything up to the end of the first half day of trial and a fee of $80 is paid per half day thereafter. This also acts as a deterrent from prolonging a legal aid trial.

(c) Preparation Fees Included

As noted above, under the existing tariff preparation fees are included in the first $235 half day block. For example, $80 of the $235 represents the half day trial fee and the remaining $155 represents pre-trial work, including preparation. If the lawyer is successful in having the matter settled without a trial after all preparation has been completed, he will be paid the $155. It was determined that the problem with the tariff is not that preparation fees are not paid but rather that those included in the block are too low.

(d) Rewarding Competence

Assuming the tariff is set at a realistic level, block tariffs reward competence because the same amount is paid no matter how many hours are spent on preparation. Therefore, the more experienced lawyer effectively gets paid a higher hourly rate than a lawyer who is less skilled. This is accomplished without the expense of administering an hourly rate system which is differentiated for experience.

(e) Predictable Costs

Because the block system deals in set units, the total costs over a fiscal period can be predicted with more accuracy than they could be if an hourly rate system were used. This is particularly important in British Columbia where legal aid budgets are fixed.

(f) Balanced Tariff

The block structure is designed to remunerate different types of service according to the relative amount of time spent on them. The criminal tariff was measured as a component of the Burnaby Public Defender Project, and it was found to be balanced effectively in this way. This does not reflect on the adequacy of individual fees but rather on their appropriateness relative to fees for other services.

The Task Force has heard criticism of the present tariff structure in that it does not provide appropriately for exceptional cases where extensive work preparation is done outside of court. Particularly in family law matters, where much of the lawyer's work is done outside of the court room, the block tariff system is perceived as a deterrent from preparing properly and working hard at settlement of a case.

It was noted by the Task Force that special fees may be awarded on a discretionary basis for exceptional cases where a written request is made to the Legal Services Society. Those exceptions are limited due to the restricted financing available to the Society. Further, in some family law cases, an hourly fee is paid up to a maximum number of hours where cases are settled by way of separation agreement or are otherwise terminated without a trial.

We recommend that the block tariff system be retained but that in appropriate cases hourly rates be paid beyond the block level. These might include cases which require a great deal of out of court preparation, such as cases where pleadings are required and in child apprehension matters, as well as where settlement has been arrived at without a trial. Encouragement to settle cases will benefit the justice system as a whole.

V. SUMMARY OF RECOMMENDATIONS

1. In principle and as a long term goal, the legal aid tariff should be structured to reflect 75% of the fee that the average lawyer would charge a paying client of modest means. The Legal Services Society, the Canadian Bar Association and the Ministry of Attorney General should collaborate in determining a tariff that reflects that criterion.

2. Over the next eighteen months (the middle term goal), the legal aid tariff should increase on average by 70% to defray, as far as practicable, the overhead costs properly attributable

to legal aid work done by private practitioners under the tariff.

3. The amendment of the tariff structure to reflect the 70% on average increase and after that the established tariff should be reviewed annually by the Legal Services Society in consultation with the Canadian Bar Association, the Law Society and the Ministry of Attorney General with a view to implementing the 75% rule as soon as practicable.

4. The Task Force concludes that a "block" system of tariffs has considerable merit and should be retained by the Legal Services Society. At the same time, the Task Force determined that the block system tariff may be inappropriate for lawyers working on family matters where much of the lawyer's work is done outside of the court room. Accordingly, it is recommended that there be provision within the block system for discretion to provide for hourly rates beyond the block level for cases which involve extensive preparation or settlement negotiations.

CHAPTER 9

COSTING IMPLICATIONS

I. INTRODUCTION

In his original instructions to the Task Force, the Attorney General directed that consideration be given to the cost implications of the Task Force recommendations. This has been done, although it must be recognized that the figures presented are necessarily only best estimates based on current costs and experience. Costing implications are discussed under headings of criminal coverage, family law coverage, civil coverage, staff services, eligibility tariff, and federal cost recoveries. Except for the latter, all costs are summarized in Table 5, which reflects the cumulative results of Tables 1 to 4, depicting costs of the recommendations on criminal law coverage, family law coverage, eligibility and tariff respectively.

II. CRIMINAL LAW COVERAGE

Criminal law coverage is discussed in Chapter 1 with recommendations summarized on pages 8 to 10. The estimated costs are presented in Table 1. The range of opinion of Task Force members on the subject of impaired drivers is discussed in Chapter 1. The implementation of the option to reduce coverage for impaired drivers could reduce the expenditures shown in Table 1 by approximately $600,000. It should be noted that the figures in Table 1 apply only to changes in coverage and do not include either eligibility or tariff costs which are presented in Parts VI and VII of this chapter.

Table 1 **COST IMPLICATIONS OF RECOMMENDATIONS RELATING TO CRIMINAL LAW COVERAGE ($1,000's)**

	Current Cost	Cost Of Recommended Additional Services (with current eligibility criteria)	Current Cost Of All Recommended Services
Criminal Law Coverage			
a) Duty Counsel	450	225	675
b) Indictable (total)	4,200 [1]	-	4,200
c) Summary (total)	2,800	-	2,800
Total	$ 7,450	$ 225[2]	$ 7,675

Note:
(1) The criminal costs do not include Young Offender Act (Canada) costs as those are to be funded separately. All current costs are at fixed eligibility levels.
(2) These costs relate only to criminal tariff payments and assume no additional administrative or staff costs.

III. FAMILY LAW COVERAGE

Family law coverage is the subject of Chapter 2 and recommendations are summarized on pages 20 to 22. Related cost estimates are reflected in Table 2.

It should be noted that the figures in Table 2 apply only to estimated cost changes in family law coverage and not to cost estimates associated with either eligibility or tariff which are presented in Parts VI and VII of this chapter.

Table 2 **COST IMPLICATIONS OF RECOMMENDATIONS RELATING TO FAMILY LAW COVERAGE ($1,000's)**

	Current Cost	Cost Of Recommended Additional Services (with current eligibility criteria)	Current Cost Of All Recommended Services
Family Law Coverage			
a) Urgent Only (Supreme and Family Court)	1,500	-	1,500
b) Duty Counsel (Family Court)	-	260 [1]	260
c) Additional Contested (Family Court)	-	1,500	1,500
d) Additional Supreme Court	-	1,050	1,050
Total	$ 1,500 [2]	$ 2,810 [3]	$ 4,310

Note:

(1) Family Court Duty Counsel assumes $30.00 per hour to a maximum of $150.00 per day (present Criminal rates).

(2) In 1982/83, the Ministry of Attorney General spent approximately $1.5 million for legal services to individuals for custody and maintenance disputes under the Family Relations Act. Service coverage was reduced in 1983/84 and expenditures were approximately $.5 million. Implementation of the recommendations made in Chapter 2 would transfer these expenditures from the Ministry of Attorney General to the Legal Services Society.

(3) These costs relate only to family tariff payments and not to tariff administrative or staff costs.

IV. CIVIL AND ADMINISTRATIVE LAW COVERAGE

This subject is discussed in Chapter 3 with recommendations summarized on page 25. While recommendations are made to

increase coverage in this area, it is not for the Task Force to apportion these services between staff and private lawyers. This is the responsibility of the Legal Services Society. For the purposes of this report, these additional costs are ascribed to staff lawyers, as in the past these services have been provided on this basis. The cost of these additional services is estimated to be $1,375,000. This figure does not reflect any costs arising from changes in either eligibility or tariff which are discussed in Parts VI and VII of this chapter.

V. NATIVE SERVICES

Services to Native peoples are discussed in Chapter 4 and recommendations summarized on page 30. Additional costs were estimated to be:

(a) $259,000 for the Native Programs Branch; and

(b) $170,000 for Native Courtworkers.

VI. ELIGIBILITY

Eligibility criteria for receiving publicly funded legal services are presented in Chapter 6 with recommendations summarized on pages 56 to 62. Table 3 identifies those areas of criminal and family law coverage that would be affected by the recommended changes in eligibility.

Table 3

COST IMPLICATIONS OF ELIGIBILITY RECOMMENDATIONS ($1,000's)

	Current Cost	Current Cost of all Recommended Services (with current eligibility criteria)	Cost Of Recommended Services With Flexible Eligibility
Criminal Law Coverage			
a) Duty Counsel	450	675	675
b) Indictable (total)	4,200 [1]	4,200	5,040
c) Summary (total)	2,800	2,800	3,360
Subtotal	$ 7,450	$ 7,675	$ 9,075
Family Law Coverage			
a) Urgent only	1,500	1,500	2,100
b) Duty Counsel	-	260 [2]	260
c) Additional Contested (Family Court)	-	1,500	1,500
d) Additional (Supreme Court)	-	1,050	1,050
Subtotal	$ 1,500	$ 4,310	$ 4,910
TOTAL	$ 8,950	$ 11,985	$ 13,985

Notes:
(1) See footnote 1 of Table 1 of this chapter.
(2) See footnote 1 of Table 2 of this chapter.

VII. TARIFF

The legal aid tariff is discussed in Chapter 8 with recommendations appearing on pages 84 and 85. As indicated in Table 4, tariff increases would affect only criminal and family law coverage. It was noted in Part IV of this chapter that additional costs of civil and administrative law coverage, at least for purposes of this report, would be ascribed to staff lawyers. It should also be noted that cost estimates for the consequences of an increased tariff are based on the implementation of recommended additional services. Further, the calculations reflect the 70% tariff increase, the middle term goal. The cost implications of implementing the 75% rule, the long term goal, remain for future calculation in the manner suggested in Chapter 8.

Table 4 COST IMPLICATIONS OF A 70% INCREASE IN LEGAL AID TARIFF ($1,000'S)

	Current Cost	Current Cost of all Recommended Services (with current eligibility criteria)	Cost of Recommended Services With 70% Tariff Increase
Criminal Law Coverage			
a) Duty Counsel	450	675	1,148
b) Indictable (total)	4,200 [1]	4,200	7,140
c) Summary (total)	2,800	2,800	4,760
Subtotal	$ 7,450	$ 7,675	$ 13,048
Family Law Coverage			
a) Urgent only	1,500	1,500	2,550
b) Duty Counsel	-	260 [2]	442
c) Additional Contested (Family Court)	-	1,500	2,550
d) Additional (Supreme Court)	-	1,050	1,785
Subtotal	$ 1,500	$ 4,310	$ 7,327
TOTAL	$ 8,950	$ 11,985	$ 20,375

Notes:
(1) See footnote 1 of Table 1 of this chapter.
(2) See footnote 1 of Table 2 of this chapter.

VIII. SUMMARY

A summary of the major cost implications of this report is contained in Table 5.

Table 5

COST IMPLICATIONS OF RECOMMENDATIONS ($1,000'S)

	(1) Current Cost	(2) Cost of Recommended Additional Services (with current eligibility criteria)	(3) Current Cost of all Recommended Services (1+2)	(4) Cost of Recommended Services With 70% Tariff Increase	(5) Cost of Recommended Services With Flexible Eligibility, but no Tariff Increase	(6) Cost of Recommended Services With 70% Tariff Increase and Flexible Eligibility
1. Criminal						
(a) Duty Counsel	450	225	675	1,148	675	1,148
(b) Indictable (total)	4,200[1]	-	4,200	7,140	5,040	8,568
(c) Summary (total)	2,800	-	2,800	4,760	3,360	5,712
2. Family						
(a) Urgent Only (Sup.&Fam.Ct.)	1,500	-	1,500	2,550	2,100	3,570
(b) Duty Counsel (Fam.Ct.)	-	260	260 [2]	442	260	442
(c) Add. Contested (Fam.Ct.)	-	1,500	1,500	2,550	1,500	2,550
(d) Add.Sup.Ct.	-	1,050	1,050	1,785	1,050	1,785
3. Staff Services[3]						
(a) Client Services	4,821	-	4,821	4,821	4,821	4,821
(b) Native Program	906	259	1,165	1,165	1,165	1,165
(c) Additional Civil Coverage	-	1,375	1,375	1,375	1,375	1,375
(d) L.I.S.	912	-	912	912	912	912
4. Admin.	1,343	-	1,343	1,343	1,343	1,343
TOTAL	16,932	4,669	21,601	29,991	23,601	33,391

(1) See footnote 1, Table 1, page 87.
(2) See footnote 1, Table 2, page 88.
(3) None of the Staff Services are affected by eligibility or tariff levels.

IX. FEDERAL COST RECOVERIES

The Task Force considers it important to note that the federal government contributes to the provision of legal aid services in British Columbia in the form of cost recoveries made to the Province of British Columbia which go directly into the Consolidated Revenue Fund. This cost-sharing occurs in three distinct areas:

(a) Criminal Legal Aid

Criminal legal aid for adults is cost-shared under a federal/provincial agreement under which the Provincial Government will recover approximately $4,400,000 for expenditures incurred by the Legal Services Society in providing criminal legal aid to adults in 1984/85. It should be noted that the cost-sharing formula under the agreement limits the federal contribution to a maximum amount in any one fiscal year notwithstanding that expenditures may well exceed twice the recoverable amount.

(b) Canada Assistance Plan

In the past, the Federal Department of Health and Welfare has provided 50/50 cost-sharing for civil legal aid as provided through the Legal Services Society and for services provided to wards of the Superintendent of Family and Child Service by the Ministry of Attorney General. Negotiations are ongoing in this area respecting administrative procedures and retroactive recoveries to 1977/78. The latter could result in recoveries of several millions of dollars. The recoveries for services to wards for 1984/85 are estimated to be $75,000. It should be noted that Federal cost-sharing under the Canada Assistance Plan is 50% of shareable expenditures without limit.

Shareable expenditures, however, include only expenditures on legal aid to persons described as "persons in need" in the Canada Assistance Plan Act.

c) **Young Offenders Act**

Expenditures by the Legal Services Society and the Ministry of Attorney General (for wards) relative to the Young Offenders Act (Canada) matters for 1984/85 are to be cost-shared by the Government of Canada on the basis of an agreement anticipated to be signed in the near future.

Under this proposed agreement, the Government of British Columbia will recover approximately $1,100,000 for related services provided by the Legal Services Society and $150,000 for related services to wards. It should be noted that, like the criminal legal aid agreement, the Young Offender legal aid agreement will have a maximum limit for federal cost-sharing purposes.

CHAPTER 10

FUNDING ALTERNATIVES FOR THE FINANCING OF PUBLIC LEGAL SERVICES

I. INTRODUCTION

1. Direction to Task Force

In his original instructions, the Attorney General directed the Task Force to give consideration to appropriate funding alternatives after the issues of scope of coverage and eligibility had been dealt with and an estimate of the costs of proposed changes had been made. At that time, the Attorney General also emphasized that

(a) due to the current economic recession the demand for public legal services has increased dramatically, and

(b) there are inherent limitations on traditional sources of funding for these services.

2. Existing Funding

The traditional sources of funding have been substantially from the federal and provincial governments and the Law Foundation of British Columbia. The provincial government contributes directly to the Legal Services Society and in turn cost-shares with the federal government through Federal/Provincial agreements pertaining to:

(a) adult criminal legal aid;

(b) Young Offenders Act (Canada) legal aid; and

(c) civil legal aid through the Canada Assistance Plan.

3. Underlying Considerations

The Task Force believes that before new sources of funding are considered it is essential to ensure that existing revenues are maximized. A proposal in this regard is examined in Part II of this chapter.

Ideally, the Task Force considers the funding of legal aid to be a state obligation. It recognizes, however, that the present intense demands on diminished public revenues may make it imperative that alternative new sources of revenue be found. In this regard, we see the funding alternative recommended by the Task Force as supplemental to government's obligation, with a view to assisting in the stabilizing of funding, not as a replacement for that obligation.

In the many submissions presented, we heard a universal endorsement of "society's commitment to the principle of equality before the law" as spoken of by the Attorney General in his letter of instructions to the Task Force. In order to realize this commitment, given the state of present circumstances as discussed above, we recommend that serious consideration be given to the acceptance and implementation of either the major new supplementary funding source that we recommend or one of the government's own making that will generate an equal amount of revenue.

In considering various funding alternatives, the Task Force applied four basic criteria. The alternative must be:

(a) realistic and practical;

(b) able to generate sufficient revenues to be administratively feasible and to meet the existing need;

(c) not simply an increase in an existing tax; and

(d) related to legal services.

Of the numerous possibilities considered, one stands out from the others in meeting the criteria. It has been put forward as the alternate funding proposal and it is discussed in Part III of this chapter. Other alternatives that were examined are briefly described in Part IV. Part II discusses our proposal for maximizing the returns on an existing source of funding.

II. MAXIMIZATION OF EXISTING REVENUE SOURCES

The Task Force perceives a significant potential for increased funding for legal aid by improving the returns on lawyers' trust accounts as administered by the Law Foundation. The Law Foundation currently allocates a substantial portion of the trust account revenues to legal aid with lesser portions allocated to legal education, law reform, legal research and law libraries. Improving the yield on funds held in lawyers' trust accounts would provide a significant additional contribution to legal aid and would be consistent with goals expressed by the Law Society.

Success has not been achieved in negotiating a satisfactory interest rate to be paid on lawyers' trust accounts. A common arrangement appears to be five percent below prime on a minimum monthly balance. That is not an adequate return. Several methods have been considered that could improve the yield. For example, it could be possible to utilize the potential of electronic funds transfer and fund management capacities within individual financial institutions. That is to say, all funds held on deposit in a particular bank could be

directed to a central account for maximum utilization on behalf of the Law Foundation and would likely yield substantially better than the existing interest rate. This practice is common among other users of the banking industry and is very likely to be accepted by the legal community. To accomplish the target in short order is a realistic challenge that we pass to the Law Society of British Columbia.

To provide an illustration, a very tentative estimate made indicates that lawyers' trust accounts hold, on an on-going basis, approximately $100 000 000. On this amount, a return at prime less two percent would produce approximately $9 000 000 in interest income. This is two and one half times the earnings of trust funds in 1983. Projections made indicate that through improved fund management practices, coupled with the higher interest return, it should be possible to increase by a factor of three the interest earnings available on lawyers' trust accounts. Utilizing the factor of three, income available to the Law Foundation, based on 1983 data, would have been in the neighborhood of $10.8 million rather than the $3.6 million that was paid. Based on historic practice, a major portion of that would be allocated to public legal services. We are satisfied that by adopting aggressive financial management practice, yields from lawyers' trust accounts can be substantially increased with consequent benefits being available for legal aid. If Law Foundation revenue is to be preserved and enhanced in the indicated way, circumstances could arise that would necessitate legislative change.

III. ALTERNATE FUNDING PROPOSAL

The stability of today's society would be greatly weakened if equality before the law were not to be universally available. The threat of that eventuality is indeed real unless a new source of revenue is found to help finance the cost of public legal services in this province. The justice system is heavily subsidized to the benefit of all of its users. It seems reasonable then to require that those members of society who are able to purchase the legal services they need pay marginally more so as to allow all others to come equally before the law. The proposal, which has the support of ten members of the Task Force, is the levying of a percentage tax on the cost of privately purchased legal services. We view the preservation of the stability of today's society vis à vis what we perceive it would be without universal equality before the law as a very small price indeed to be paid by those able to afford private legal services. The support of Mr. Horsey is subject to the qualification of an uncertainty on his part as to whether it would be more efficient to raise taxes under the existing tax structure. If that were the case, he would favour that method of raising funds.

The proposed tax would be a user tax in much the same way as the present sales tax is levied on goods purchased, meals consumed or lodgings rented. The tax on telephone accounts is an example of a direct tax levied in a service area. The tax on legal services would be imposed for the special purpose of providing services parallel to those to which the tax would be applied.

Task Force members were not the originators of this proposal. The suggestion, presented by a community group from a small municipality in the central part of the province during one of our public hearings, was set out in this form:

> "That serious investigation be made into levying a type of social services tax on transactions (or billings) of the private bar - such revenue to be specifically designated for the funding of the provision of legal services to persons not ordinarily able to afford a lawyer or other legal service."

The suggested serious investigation was carried out and our adoption of the proposal is the result.

New forms of taxation are never popular. Many reasons can be advanced against the imposition of any new tax and this proposal is no exception. Subject to another more appealing suggestion to raise needed new revenue, the good that will flow from the imposition of the tax will far outweigh the negative aspects that may be attributed to it. The consequences of funding not being available for essential legal services to those eligible for them affords a ready response to critics.

The legal profession would not likely be enthusiastic about administrative problems arising from the levy of the proposed tax, notwithstanding a modest collection fee that would undoubtedly be available. However, since the legal profession is the strongest advocate of retention of public legal services at a level that the Task Force considers to be essential, its endorsement of this proposal would simply reflect its support for the clear and united call that it has made in that regard.

Very preliminary research has been done to determine the gross amount of lawyers' billings within the province over the course of a year. Consideration has been given to available data from Statistics Canada, Revenue Canada and studies conducted by the Canadian Bar Association dealing with income of Canadian law firms. It is estimated that each percentage point of tax would yield approximately $2 million to $2.5 million.

The fundamental objective in assessing both present and alternate methods of financing for legal services is to develop and recommend mechanisms that ensure an on-going, adequate and stable source or sources of financing to fund the minimum acceptable level of legal services on an on-going basis. A one or two year solution merely perpetuates current problems for government and the Legal Services Society. The Task Force believes that the totality of recommendations made in this chapter with respect to traditional funding sources and the introduction of a new source meets the indicated fundamental objective.

Many administrative details would require attention. For example, a method would have to be devised to determine the value of in-house legal services available to corporations. There is no reason why service of this type should be exempt from the proposed tax. Other examples include contingency arrangements, suitable exemptions from the tax and the priority of this charge vis à vis other commitments. Many administrative details, which would best be developed by the provincial government in consultation with the Legal Services Society and any other relevant groups, would require attention once a decision is made to implement the proposed tax.

Messrs. Jacobsen and Owen-Flood dissent from the foregoing alternate funding proposal. Their position is stated in Minority Opinion Number 2.

IV. ADDITIONAL FUNDING ALTERNATIVES

The Task Force examined numerous funding alternatives in addition to the tax proposal put forward in Part III. This section provides a brief overview of these other alternatives.

1. Federal Government

As previously noted, the federal government contributes to legal aid, through Federal/Provincial cost-sharing agreements in three broad areas:

(a) adult criminal legal aid;

(b) Young Offenders Act (Canada) legal aid; and

(c) civil legal aid through the Canada Assistance Plan.

Federal funds contributed through these agreements are paid directly into the consolidated revenue fund of the Province. It was considered that if these were to be identified as federal contributions to the Ministry of Attorney General's budget, the apparent reliance of legal services on the provincial Treasury would be significantly reduced, but obviously this approach does not actually provide new funds and therefore is not an answer to the existing problem.

2. Legal Services Foundation

It was considered that a foundation could be established as a parallel organization to the Legal Services Society to receive and administer donations for legal aid and that an endowment

fund could then be established to accumulate funds and help stabilize the financing of legal services. However, it was determined that such a fund could not provide the amount of money determined to be necessary.

3. **Transaction Trust Accounts**

The Law Foundation is mandated under the Barristers and Solicitors Act to receive and distribute the income from lawyers' general trust accounts for stated purposes relating to the law, including legal aid. Similar trust funds are held by Notaries Public and real estate agents with no similar arrangements to recover the interest for public purposes. It was considered that a system parallel to that of the Law Foundation could be established whereby a set percentage of those funds could be payable for legal aid with the remainder available to fund the particular educational or other related interests of the group involved. We believe that negotiations should take place with the indicated groups with a view to launching this proposal. We see this source as a meaningful supplement to legal aid revenue in coming years, but not of itself sufficient to meet the current challenge.

4. **Specific Project Grants**

Inquiries have been made to seek grants from private foundations and the federal government. While some possibilities exist to obtain limited funds for a limited period, these are unlikely to provide long term, stable support for general legal aid services.

5. **Surcharge on Civil Filings**

A stable source of funds could be raised for legal aid by imposing a percentage surcharge on the court filing fee for civil cases. This would not, however, provide a significant source of funding.

6. **Surcharge on Fines**

A percentage surcharge on all fines imposed in B. C. could raise large amounts of money on a stable basis. The surcharge was not perceived, however, to have a sufficiently clear enough link with legal services to recommend imposition.

7. **Client Repayment Schemes**

Generally, in B. C. a legal aid client is not required to become indebted to the Legal Services Society for the cost of services provided. This is similar to the social assistance regulations. The financial eligibility criteria are very strict and contributions are taken wherever possible. Where a family home is involved and the private lawyer is willing to take a non-interest bearing mortgage on it for the amount of his private fee in lieu of a legal aid fee, this can be approved by the Society. The fee is then recovered when the home is sold or refinanced.

8. **Pro Bono Programs**

The Legal Services Society has done extensive research into this area in the last two years. While pro bono programs such as the Bar supported Lawyer Referral Service and Dial-a-Law programs are not considered to be a viable alternative to stable publicly funded legal aid, they provide a helpful supplement to the overall plan in addition to providing

valuable lawyer subsidized services. The low level of tariffs means that a substantial charitable contribution is made by all lawyers accepting legal aid referrals. Approximately 1 000 lawyers throughout the province have agreed to provide free services on this basis. While this worthwhile program is being slowly expanded, it has a limited impact on the great need for family and criminal law services.

9. **Tax Deductions for Legal Services**

It was considered that an impetus for wider participation in both the referral and pro bono programs could result from an amendment to federal or provincial tax policies that would permit the deduction of the value of legal services provided on a charitable basis from taxable income. This amount could be the difference between modest private fees and the legal aid tariff for any particular service, or the full private fee for pro bono work. Possible acceptance of such a system would obviously be a long term matter requiring extensive and detailed negotiations; it is therefore not seen as a practical solution in the immediate time frame although it is desirable that these negotiations proceed with leadership from the Legal Services Society.

V. SUMMARY OF RECOMMENDATIONS RELATING TO FUNDING ALTERNATIVES

1. The Task Force considers the funding of legal aid to be a state obligation, but recognizes that present intense demands on diminished public revenues make impractical further

movement in that regard at this time. Any funding alternative would be supplemental to government's obligation with a view to assisting in stabilization of funding and not a replacement for the obligation of providing that funding.

2. In addition to a proposal to establish a new source of funding for legal aid, the Task Force considers it essential that existing traditional revenues be increased. In this regard, we recommend the adoption of aggressive financial management practices to improve the yield on funds held in lawyers' trust accounts and that a significant portion of the resulting increased revenues be contributed to legal aid. Leadership to achieve this target is to be assumed by the Law Society.

3. As a supplement to traditional funding of public legal services, it is proposed that a percentage tax be levied on the cost of privately purchased legal services. (Two Task Force members disagree with this proposal.)

4. Consideration should be given to the following alternate supplemental funding proposals:

   (a) establishment of foundations to utilize income from trust accounts of Notaries Public and real estate agents; and

   (b) tax deductions for legal services provided on a charitable basis.

MINORITY OPINION NUMBER 2

ISSUE: PROPOSED TAX ON LAWYERS' BILLS

In the minority view there are three major reasons why it is improper to levy a tax on lawyers' billings.

1. In many instances it is economically difficult for members of the public to receive and pay for legal services. In some areas of conflict, particularly family law, assistance of counsel is vital. A tax may add a sufficient economic burden to discourage the retention of counsel.
2. There is a strong possibility that any addition to a corporate legal bill would be passed on to the public as a "cost of doing business".
3. The thrust of the tax measure is aimed at lawyers who are engaged in the private practice of law. These are the same lawyers who are annually donating millions of dollars of their time to providing services to the needy. To further add the costly administrative burden of the proposed tax is to seriously misjudge the legal profession and its contribution to the public of British Columbia.

CHAPTER 11

PRIORITIES

There remains for consideration the matter of setting priorities with respect to the recommendations contained in this report. This is a difficult task when addressing coverage deemed essential. However, we recommend, in general order of priority:

1. Implementation of the additional family law coverage as proposed in Chapter 2;
2. Enhancement of services to Native peoples as proposed in Chapter 4;
3. Adoption of the flexible eligibility criteria as proposed in Chapter 6;
4. Implementation of administrative law coverage as proposed in Chapter 3;
5. Implementation of additional coverage in other matters as proposed in Chapters 1, 3 and 5;

Related to the concept of providing essential services to those persons who should be eligible to receive them is a tariff adequate to ensure a reasonable level of representation. Chapter 8 aptly forewarns of the dangers inherent in continued inadequate recompense under the tariff.

APPENDIX A

INDIVIDUALS AND GROUPS MAKING SUBMISSIONS

ALERT BAY PUBLIC LIBRARY (m)
Submission from Joyce M. Wilby, community librarian, Alert Bay

ALEXANDER, MRS. LILY (m)
Vancouver

ALLIK-PETERSENN, PETER*
Lawyer from Williams Lake, Prince George, March 10

ALLWOOD, JOHN*
Kelowna March 2

ANAGNOD, THOMAS *
Kelowna March 2

ANGLICAN CHURCH, SOCIAL CONCERNS COMMITTEE*
Presentation by Rev. Art Rowe, Chairman
Prince Rupert February 18

ARCHAMBAULT, DENIS P. AND JOAN M. HARRIS
On behalf of concerned lawyers in Prince George, March 10

ASHCROFT SECONDARY SCHOOL (m)
Submission from Anthony Smith, law instructor, Ashcroft

BARNETT, HIS HONOUR C.C. (m)
Williams Lake

BARTON, VAN*
Kelowna March 2

BATEMAN, VELMA
Kelowna March 2

BATTERED WOMEN'S SUPPORT SERVICES (m)
Submission from Nadine Allen, education coordinator, Vancouver

LAW STUDENTS LEGAL ADVICE PROGRAM (m)
Submission from Jonathan McCullough, coordinator, Vancouver

BCGEU
Presented by Joanne Fox, Vancouver, March 30

BELLOWS, ROBERT*
Barrister & Solicitor, Vancouver, April 11

BLENCO, ROBIN
Victoria, March 16

BLENKHORN, L.V. (m)
Agassiz

BOARD OF SCHOOL TRUSTEES
Presentation by Helen Stamnes, Chairman
Prince Rupert February 18

BRAMWELL, STEVEN (m)
Abbotsford

BRANDL, V. E. (m)
Resident of Fort St. John

BRENNAN, CHRISTOPHER (m)
Victorial

JAMES BAY COMMUNITY PROJECT (m)
Submission from R. M. Dill, Executive Director, Victoria

BRITISH COLUMBIA ASSOCIATION OF SOCIAL WORKERS
Presented by Len Schmidt, Vancouver, March 24

BRITISH COLUMBIANS FOR MENTALLY HANDICAPPED PEOPLE
Presentation by Catharine Herb, Vancouver, March 31

BURNABY UNEMPLOYMENT ACTION CENTRE (m)
Submission from Gerry Miner, coordinator, Vancouver
YAWORSKI, BEVERLEY (m)
Vancouver

BURNS LAKE YINKADINEE KEYAKH LAW CENTRE SOCIETY
Presentation by C.D.R. Maddock, staff lawyer, Prince George
March 10

B.C. ASSOCIATION OF SOCIAL WORKERS, NORTH VANCOUVER ISLAND BRANCH (m)
Submission from Carol Matthews on behalf of executive, Nanaimo

B.C. CIVIL LIBERTIES ASSOCIATION
Presented by Michael Bolton, Vancouver, March 24

B.C. FEDERATION OF LABOUR
Presented by Mike Kramer and Astrid Davidson,
Vancouver, March 24

B.C. HUMAN RIGHTS COALITION, VANCOUVER REGION
Presentation by Alitia Lawrence, Vancouver, March 31

B.C. LIBRARY ASSOCIATION
Presentation by Joan Wenman, Vancouver, March 31

B.C. NATIVE WOMEN SOCIETY OF FORT ST. JOHN
Presentation by Carleen Labourcane, Fort St. John, March 9

B.C. NEW DEMOCRATIC PARTY
Presentation by Rosemary Brown, Vancouver, March 31

B.C. PUBLIC INTEREST ADVOCACY CENTRE
Presentation by Richard Gathercole and Jennifer Harry,
Vancouver, March 31

B.C. TENANTS RIGHTS COALITION
Presented by Wayne MacEachern, Vancouver, March 24

B.C.G.E.U.*
Presentation by David MacPherson, Kamloops, March 3

CAMPBELL RIVER, COURTENAY & DISTRICT LABOUR COUNCIL'S COMMITTEE OF THE UNEMPLOYED
Presentation by John Shaw, Campbell River, March 17

CANADIAN BAR ASSOCIATION, B. C. BRANCH, FAMILY LAW SUB-SECTION (VANCOUVER)
Presentation by Elaine Mutrie, New Westminster, March 23

CANADIAN BAR ASSOCIATION, B.C. BRANCH (m)
Submission from J. J. Camp, Vancouver

CANADIAN UNION OF PUBLIC EMPLOYEES
Presentation by Doris Hanson, National Representative,
New Westminster, March 23

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2699 ABBOTSFORD
Presentation by Jim Quail, President,
New Westminster, March 23

CAPILANO COLLEGE (m)
Submission from Kathryn Feeney, librarian, North Vancouver

CARIBOO COLLEGE STUDENT SOCIETY (m)
Submission from David M. Rees, Kamloops

CARIBOO-THOMPSON NICOLA LIBRARY*
Presentation by Harry Newson, Kamloops March 3

CAYOOSE CREEK-LILLOOET INDIAN BAND (m)
Submission from Chief Perry Redan, Lillooet

CBA COMMITTEE ON HUMAN RIGHTS
Presented by Mark Krasnick, Vancouver, March 24

CBA, BC BRANCH, CRIMINAL JUSTICE SECTION
Presented by Peter Leaske

CBA, B.C. BRANCH, CIVIL LITIGATION SUBSECTION, (Vancouver)
Presentation by Stephen Schachter, Vancouver, March 31

CENTRAL OKANAGAN EMERGENCY SHELTER SOCIETY (m)
Submission from Charlotte Kushner, Executive Director
Kelowna

CENTRAL OKANAGAN SOLIDARITY COALITION
Kelowna March 2

CHILD CARE SERVICE, Powell River (m)
Submission from Mary-Lynn Jacques, Powell River

CITY OF QUESNEL (m)
Submission from A.R. Miller, Administrator, Quesnel

COLLEGE OF NEW CALEDONIA, Prince George
Presentation by Frances Long, Prince George, March 10 ,

COLUMNEETZA SENIOR SECONDARY SCHOOL (m)
Submission from Sandra Hawkins, law teacher, Williams Lake

COMMUNITY COUNCIL OF GREATER VICTORIA (m)
Submission from James Anglin, president, Victoria

COMMUNITY PRISONER NETWORK*
Presentation by David Blake
(accompanied by ex inmates/parolees),
New Westminster, March 23

COMMUNITY SERVICES SOCIETY*
Presentation by Ruth Spearn, Terrace, February 17

CONCRESS OF CANADIAN WOMEN
Presented by Anna Holbeck, Vancouver, March 24

CORPORATION OF THE DISTRICT OF POWELL RIVER (m)
Submission from D.W. Black, municipal clerk, Powell River

CORPORATION OF THE TOWNSHIP OF RICHMOND (m)
Submission from Glyn Morris, Municipal Clerk, Richmond

CORRECTIONS BRANCH - YOUTH DETENTION CENTRE, Burnaby (m)

COSBURN KAREN PLENERT POPE & COMPANY, Dawson Creek
Presentation by Wayne Plenert, Fort St. John, March 9

COURTENAY & DISTRICT LABOUR COUNCIL
Presentation by Jim Gordon, Campbell River, March 17

CRIMINAL JUSTICE SUBSECTION, VICTORIA BRANCH, CBA*
Presentation by Steve Kelliher, Victoria, March 16

CRIMINAL JUSTICE SUBSECTION, VICTORIA BRANCH, CBA*
Presentation by Viona Hunter, Victoria, March 17

CRISIS CENTRE CRANBROOK*
Presentation by Gary Dalton, Cranbrook, February 18

CROW, D. G. (m)
Resident of Quesnel

CURRIE, DON*
Lawyer in Fort St. John, March 9

DAVIES, DEBBIE (Salt Spring Island)
Presented on behalf of I. Wright, J. Havelaar, D. Williams, K. Ratz, Victoria, March 17

DAWSON CREEK & DISTRICT CHAMBER OF COMMERCE (m)
Submission from Elaine Wolf, Manager, Dawson Creek

DAYTON, MARTHA*
Nelson, February 17

DELTA FAMILY COURT COMMITTEE (m)

DEMCHUK, ANN
Legal Services Society employee, Kamloops, March 3

DEVLIN, BILL*
Nelson, February 17

DICK, BOB*
Bencher, Prince George, March 10

DISABLED PERSONS SOCIETY OF DAWSON CREEK
Presentation by Ray Carlson, Fort St. John, March 9

DOWNTOWN EAST SIDE RESIDENTS ASSOCIATION
Presented by Glen Bullard, Vancouver, March 30

EAST HIGHLAND COMMUNITY ASSOCIATION*
Presentation by Christina Rainey on behalf of Association and herself, Victoria, March 17

EAST KOOTENAY LABOUR COUNCIL
Presentation by Ardeth Paxton Mann on behalf of James Patterson, Cranbrook, February 18

ELIZABETH FRY SOCIETY*
Presentation by Charlotte Monachie Kelowna March 2

ELIZABETH FRY SOCIETY*
Presentation by Bruce Macall, Kamloops, March 3

ELIZABETH FRY SOCIETY
Presented by Joan Creighton, Joan Vogel, Patsy Hanson, Sandy Simson, Vancouver, March 30

ELIZABETH FRY SOCIETY, Prince George
Presentation by David Thackery, Prince George, March 10

EWAN, GLEN*
Kamloops March 3

FAMILY COURT COMMITTEE, DISTRICT 43
Presentation by Sheila Francis New Westminster, March 23

FEDERATED ANTI POVERTY GROUPS
Presentation by Robert Arnold, Victoria, March 17

FEDORAK, JAMES
On behalf of D. Bartiett, D. Driedger, J. Stonier, all formers members of Kamloops Regional Law Centre, Kamloops, March 3

FORREST, MICHELLE*
Victoria, March 17

FORT NELSON WOMEN'S RESOURCE CENTRE
Presentation by Michelle Lanouette, Fort St. John, March 9

FRANKS, MIKAL*
Resident of Fort St. John, March 9

GIBBS, RICHARD*
Lawyer, Prince George, March 10

GILLARD, DONALD (m)
Mission

GOLDBERG, SHELDON (m)
Barrister & Solicitor, Vancouver

GOODMAN, DON
, Vancouver, March 24

GOW, DR. HAMISH*
Bencher, Law Society, Victoria, March 17

GRAYSON, PHOEBE*
Lawyer in Courtenay, Campbell River, March 17

GREATER VANCOUVER ASSOCIATION FOR THE DEAF*
Presentation by Henry Vlug, Vancouver, March 31

HAIDA COUNSELLING & LEGAL ASSISTANCE SOCIETY(MASSET)
Presentation by Frank Collinson Prince Rupert February 18

HAIDA COUNSELLING & LEGAL ASSISTANCE SOCIETY (SKIDEGATE)
Presentation by Nellie Cross, Prince Rupert February 18

HANSON, BYRON (m)
Student, Prince George Senior Secondary, Prince George

HARDWICK, GRANT *
Kelowna March 2

HARROP, PHILLIPS, POWELL & GIBBONS
Presentation by David W. Gibbons, Barrister & Solicitor,
Vancouver, April 11

HAZELTON SECONDARY SCHOOL (m)
Submission by Neal Erickson, Teacher, March 2

HENRY, PAUL
Staff Lawyer, Legal Services Society, Kelowna
Kelowna March 2
CHARBONNEAU, CHRIS
Staff Lawyer, Kelowna Regional Office
Legal Services Society, Kelowna March 2

HILLARY, BETTY
Resident of Taylor, Fort St. John, March 9

HILL, ELIZABETH (m)
Ganges

INMATE COMMITTEE, KENT INSTITUTION (m)
Submission from L.Corbett, chairman; I.Macaskill, secretary;
A.Kozak, member, Agassiz

INTERIOR INDIAN FRIENDSHIP SOCIETY
Presentation by Ruth Williams, Kamloops, March 3

JACKSON, MICHAEL*
Barrister & Solicitor, Vancouver, April 11

JACKSON, ROBERT (m)
Castlegar

JACK, BILL
Kelowna March 2

JACQUES, P. A. (m)
Powell River

JENSEN, VICTOR C.(m)
Agassiz

JOHNNY, Ina F. (m)
Alexandria Indian Band, Quesnel

JOHNSTON AND GARLING
Presentation by David Garling on behalf of Johnston & Garling, consulting counsel, Powell River Civil Liberties Society, Campbell River, March 17

JORDAN, CHRIS (m)
Mission

KAMLOOPS BAR ASSOCIATION*
Presentation by Jim Horne Kamloops March 3

KAMLOOPS CHAMBER OF COMMERCE*
Presentation by F. J. Quinn, Kamloops, March 3

KAMLOOPS & DISTRICT LABOUR COUNCIL*
Presentation by Keith Simmons, Kamloops, March 3

KAN, MARINA*, Staff Lawyer, Legal Services Society
Prince Rupert February 18

KASAN HOUSE
Presentation by Annalee Davis, Terrace, February 17

KELOWNA BRANCH OF B.C.BAR ASSOCIATION and CRIMINAL LAW SUB SECTION
Presentation by Alan Elliott Kelowna March 2

KELT, GLEN*
Crown Counsel Prince George, March 10

KENNEDY, DIANE & BILL GREENHALGH*
Students, University of Victoria, Victoria, March 17

KERMODE FRIENDSHIP SOCIETY
Presentation by Joanne Peter, Terrace, February 17

KITIMAT-TERRACE AND DISTRICT LABOUR COUNCIL
Presentation by Keith Alford, Terrace, February 17

KOOTENAY BAR ASSOCIATION
Presentation by Richard Spilker & John Carpenter*,
Nelson, February 17

KOOTENAY BAR ASSOCIATION
Presentation by Gordon Mamen, Cranbrook, February 18

LAICH-KWIL-TACH STATE
Presentation by Russell Kwasistala, Emissary of State,
Campbell River, March 17

LANGMAN, S.(m)
Resident of Powell River

LAW SOCIETY OF BC
Presented by Brian McLoughlin, Q.C.,
Vancouver, March 24

LAW UNION OF B.C.
Presented by Judi Gedye, John Stanton, Stan Guenther,
Vancouver, March 24

LAX KW'ALAAMS BAND COUNCIL
Presentation by James Bryant, Prince Rupert February 18

LEGAL AID FOR WORKERS COMPENSATION
Presented by Craig Paterson and Allan MacLean,
Vancouver, March 30

LEGAL RESOURCES FOR SENIORS COMMITTEE (m)
Unsigned submission, North Vancouver

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Kamloops
Presentation by Mark Benton, staff counsel, Kamloops, March 3

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Campbell River*
Presentation by Lee Burrows, lawyer, Campbell River, March 17

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Vancouver
Presentation by Don Silversides, chairman, Vancouver, March 31

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Kamloops (m)
Submission from J. Hodgson, secretary/legal assistant, Kamloops

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Williams Lake
Presentation by Rod Hawkins, Prince George, March 10

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Fort St. John*
Presentation by Allan Vander Linde, staff lawyer, Fort St. John, March 9

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Dawson Creek
Presentation by Forrest Nelson, staff lawyer, Fort St. John, March 9

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Prince George
Presentation by D. O'Leary & A. Krantz, Prince George, March 10

LEGAL SERVICES SOCIETY OF BRITISH COLUMBIA, Dawson Creek (m)
Submission from Muriel Fenton, secretary/legal assistant
Dawson Creek

LEGAL SERVICES SOCIETY, ABBOTSFORD PRISON LEGAL SERVICES SECTION
Presentation by John Conroy, New Westminster, March 23

LEGAL SERVICES SOCIETY, Nanaimo
Presentation by Allan Parker, Campbell River, March 17

LEGAL SERVICES, RICHMOND (m)
Robert H. Wright,

LESTER, PETER (Mayor of Prince Rupert)*
Prince Rupert, February 18

LEWALL, TED
Resident of Charlie Lake, Fort St. John, March 9

LITTLE MOUNTAIN NDP CONSTITUENTS*
Presented by Gerry Scott, Vancouver, March 24

LIVINGSTONE, LLOYD (m)
Mission

LLOYD, MARSHALL*
Terrace, February 17

LOUIS RIEL METIS ASSOCIATION OF DAWSON CREEK*
Presentation by Noel Minnow, Fort St. John, March 9

LYONS, KRIS (m)
Maple Ridge

MACKEY, WILLIAM (m)
Mission

MALASPINA COLLEGE, Social Service Worker Program, (m)
Submission from Ellis Lindsay, coordinator, Nanaimo

MALASPINA COLLEGE, Women's Resource Centre (m)
Submission from Adrienee Kemble, coordinator, Nanaimo

MARSHALL, Michael (m)

MATSQUI/ABBOTSFORD COMMUNITY SERVICES
Presentation by Walter Paetkow and Calvin Sandborn,
New Westminster, March 23

MC CALLUM, PAUL*
Resident of Prince George, March 10

MC GRATH, RICHARD*
Nelson, February 17

MELNICK, TOM*
Cranbrook, February 17

MILLER, DAVID*
Staff Counsel, Legal Services Society, Nelson, February 17

MILLER, MURRAY*
Terrace, February 17

MOUNT ELIZABETH SECONDARY SCHOOL (m)
Submission from E.P. Sande, teacher-librarian, Kitimat

MULTILLINGUAL ORIENTATION ASSOCIATION FOR IMMIGRANT COMMUNITIES
Presentation by Dr. Stanley Knight,
New Westminster, March 23

MURRAY, DENNIS*
Regional Crown Counsel, Vancouver Island
Victoria, March 17

NANAIMO COMMUNITY LAW CENTRE*
Presentation by Dick Grinnel & Allan A. Parker
Campbell River, March 17

NANAIMO COUNCIL OF WOMEN (m)
Submission from Doris M. Lee, president Nanaimo

NATIVE COURTWORKERS AND COUNSELLING ASSOCIATION
Presentation by K. Teneese & B. Murphy, Vancouver, March 31

NATIVE INDIAN CHILD WELFARE ADVISORY COMMITTEE
Presented by Freda Campbell and Barbara Murphy, Vancouver, March 24

NEED, VICTORIA'S CRISIS LINE (m)
Submission from Ann Tasko, Administrative Coordinator Victoria

NEIGHBOURHOOD LEGAL CLINIC (m)
Submission from D. E. Jabour, North Vancouver

NELSON MUNICIPAL LIBRARY
Submission by Bonnie Sullivan (m), Nelson, February

NEW WESTMINSTER AND DISTRICT LABOUR COUNCIL AND UNEMPLOYMENT ACTION CENTRE(m)

NICOLA VALLEY FRIENDSHIP CENTRE*
Presentation by Kevin Grinsted, Kamloops, March 3

NORKAM SENIOR SECONDARY SCHOOL (m)
A.W. Bailey, G. Gamache, T. Munroe, T. Olson, J. Macdonald, D. Mackenzie, Kamloops, March 3

NORTH CENTRAL LIBRARY ASSOCIATION
Presentation by Dave Foster, Prince George, March 10

NORTH SHORE CRISIS SERVICES SOCIETY
Presentation by Rob Darling and Barbara Wild, New Westminster, March 23

NORTH SHORE FAMILY SERVICES SOCIETY (m)
Submission from Beth McAdams, president, North Vancouver

NORTH SHORE INFORMATION AND VOLUNTEER CENTRE
Presentation by Pearl McKenzie, New Westminster, March 23

NORTH SHORE WOMEN'S CENTRE (m)
Unsigned submission, North Vancouver

NORTHCOTT, PETER
Prince Rupert, February 18

NORTHERN FRIENDSHIP CENTERS OF CHETWYND, DAWSON CREEK, FORT ST. JOHN, AND FORT NELSON
Presentation by Odette Wright, Fort St. John, March 9

OIEN, CAROLYN (m)
Family Court Counsellor, Kamloops, March 3

OKANAGAN WOMEN'S COALITION
Submission by Joan McNeil, Kelowna March 2

OKROS, DAVID*
Nelson, February 17

OSOYOOS SECONDARY SCHOOL (m)
Submission from J. FitzGibbon, Osoyoos

PATRICK, BEATRICE W. (m)
Member Richmond Women's Resource Centre, Richmond

PEACE RIVER ACTION CENTRE FOR THE UNEMPLOYED
Presentation by Charlotte Keeler, Fort St. John, March 9

PENTICTON TRAINING CENTRE (m)
Submission from Jack P. Damen, Manager, Penticton

PENTICTON & DISTRICT MOBILE HOME OWNERS ASSOCIATION (m)
Submission from Rev. W. D. Love, President, Penticton

PENTICTON & DISTRICT SOCIETY FOR THE MENTALLY HANDICAPPED (m)
Submission from Dorothea M. Munro, Director, Penticton

PERRY, C. DAVID (m)
Law instructor, Penticton Secondary School

PHOENIX TRANSITION SOCIETY (m)
Submission from Nora Harmider, manager, Prince George

PONTAFIX, KEN*
Lawyer, Prince George, March 10

PORT ALBERNI FAMILY GUIDANCE ASSOCIATION (m)
Submission from Mary Dolen, counsellor/director, Port Alberni

PORT ALBERNI FRIENDSHIP CENTRE (m)
Submission from Christine Sim, Port Alberni

PORT ALBERNI FRIENDSHIP CENTRE*
Presentation by Christine Sim, Campbell River, March 17

POWELL RIVER CIVIL LIBERTIES SOCIETY (m)
Submission from Vince Hernandez, president, Powell River

POWELL RIVER COMMUNITY LAW OFFICE
Presentation by Gary Cowell, Legal Information Counsellor
Campbell River, March 17

POWELL, LITA*
Resident of Fort St. John, March 9

PRINCE CHARLES SECONDARY SCHOOL, Business Education Dept.
Presentation by Shiv K. Kapoor, Cranbrook, February 18

PRINCE GEORGE CRISIS INTERVENTION SOCIETY
Presentation by Maureen Flager, Prince George, March 10

PRINCE GEORGE OPERATION SOLIDARITY COALITION
Presentation by Paul Cochrane, Prince George, March 10

PRINCE GEORGE & DISTRICT LABOUR COUNCIL (m)
Submission from Donna Sacuta, chairperson, Unemployed Action Centre Committee, Prince George

PRINCE RUPERT AND DISTRICT LABOUR COUNCIL
Presentation by Lorn Quick, Prince Rupert, February 18

PRINCE RUPERT CHAMBER OF COMMERCE
Presentation by Gordon Gillam, Prince Rupert February 18

PRINCE RUPERT DISTRICT TEACHERS ASSOCIATION
Presentation by Jim Carr, President,
Prince Rupert February 18

PRINCE RUPERT FAMILY COURT COMMITTEE*
Presentation by Nora Lowe Prince Rupert February 18

PRINCE RUPERT PROBATION AND FAMILY COURT SERVICES
Presentation by Elizabeth Cook on behalf of the staff
Prince Rupert February 18

PRINCE RUPERT UNEMPLOYMENT ACTION CENTRE
Presentation by Jeannie Hartney, Prince Rupert February 18

PRINCETON & DISTRICT COMUNITY SERVICES (m)
Submission from Joyce Fraser for Board of Directors, Princeton

PRISONERS' RIGHTS GROUP
Presentation by Claire Culhane, Vancouver, March 31

PROWSE, KATHERINE (m)
Vancouver

PUBLIC LEGAL EDUCATION & INFORMATION COMMITTEE, B.C. BRANCH, CBA, Vancouver (m)
Submission from Keith R. Hamilton, chairman, Vancouver

PUBLIC LIBRARY*
Presentation by Ed Curell, Terrace, February 17

QUESNEL COMMUNITY LAW CENTRE
Presentation by Brendan Kennedy, Prince George, March 10

QUOCKSISTER, Frances & Joseph Bruce (m)
Nanaimo

REDMAN, VICTOR
Vancouver, March 24

REVELSTOKE SECONDARY SCHOOL (m)
Submission from Paul Hills, law teacher, Revelstoke

RHODES, MICHAEL*
Barrister & Solicitor, Vancouver, April 11

RICHMOND COMMUNITY LEGAL INFORMATION OFFICE
Presentation by Penny Goldsmith, New Westminster, March 23

RICHMOND COMMUNITY SERVICES COUNCIL (m)
Submission from Jennifer Larsen, vice chairman, Richmond

RICHMOND SCHOOL DISTRICT #38 (m)
Submission from concerned educators, Richmond

RICHMOND WOMENS RESOURCE CENTRE
Presented by Marielle Demorest, Vancouver, March 24

ROBERTS, KIM C.
Barrister & Solicitor, Vancouver, April 11

ROUSE, EDWARD J. (m)
Agassiz

SAUCIER, BOB*
Kamloops March 3

SCHMITZ, JOHN BERRY (m)
Lawyer, Quesnel

SELF DEVELOPMENT CENTRE
Presentation by G. Harris, L. Davis & D. Livingstone,
Victoria, March 17

SENIORS SERVING SENIORS
Presentation by J. Moffatt and B. Smith, Victoria, March 16

SHERIFF'S OFFICE, VANCOUVER ISLAND REGION NO. 1 (m)
Submission from K.A. Schendel, Nanaimo

SINGH, Mrs. Padmawati
Resident of Powell River, Campbell River, March 17

SINGLE PARENT RESOURCE CENTRE (m)
Submission unsigned, Victoria

SIR CHARLES TUPPER SECONDARY SCHOOL (m)
Submission from T. Mullan, law teacher, Vancouver

SMITHERS INDIAN FRIENDSHIP CENTRE
Presentation by Andrew George, Terrace, February 17

SMITHERS SECONDARY SCHOOL (m)
Ian Malcomson, Teacher, February 20

SMITH, DAVID*
Lawyer, Prince George, March 10

SOCIETY OF TRANSITION HOUSES (BC AND YUKON)
Submission from Annalee Davis (m) Terrace March 24

SOLIDARITY COALITION
Presented by Father Jim Roberts, Joe Arland, Sue Harris, Gus Long, Vancouver, March 24

SOUTH OKANAGAN ALCOHOL COUNSELLING SERVICE (m)
Submission from Roy Kennedy, Director, Penticton

SOUTH OKANAGAN CIVIL LIBERTIES SOCIETY (m)
Submission from Geoffrey A'Bear, President, Penticton

SOUTH PEACE COMMUNITY RESOURCES SOCIETY
Presentation by Molly Henney, Fort St. John, March 9

SOUTH PEACE SENIOR CITIZENS ASSOCIATION NO. 74
Presentation by Jeanne Hunter, president, Fort St. John, March 9

STATUS OF WOMEN'S ACTION GROUP
Presentation by Glenda McPherson, Victoria, March 17

STEWART, BILL (m)
Yellowknife

ST. ARMUND, DENISE (Librarian)*
Prince Rupert February 18

ST. LEONARD'S SOCIETY (NORTH SHORE) (m)
Unsigned submission, North Vancouver

S.A.F.E. SOCIETY (m)
Submission from Catherin White, vice president, Salmon Arm

TAYLOR, MARGARET (m)
Smithers March 11

TERRACE BAR ASSOCIATION
Presentation by Gordon Crampton, David Warner,
Ed Dewalt, Vern Frolick, Claire Guest*, Terrace, February 17

TERRACE FAMILY COURT COMMITTEE
Presentation by Duncan Irwin*, Terrace, February 17

THE HATFIELD SOCIETY (m)
Submission from Dr. P.C. Simon, Executive Director, Vancouver

THE LAW CENTRE ASSOCIATION OF VICTORIA
Presentation by G. MacDonald & M. Huscroft, Victoria, March 16

THE VICTORIA WOMEN"S TRANSITION HOUSE
Presentation by Dulcie McCallum, Victoria, March 17

THOMAS, MIKE (m)
Powell River

TRACY, MAXWELL*
Victoria, March 17

TRUEMAN, CARLIE*
Prince Rupert February 18

TURNER, DAVID (m)
Agassiz

UBC LAW STUDENT ASSOCIATION
Presented by Robert Culos, Vancouver, March 24

UNEMPLOYED WORKERS CENTRE, Nanaimo (m)
Submission from Dyved Freethy, coordinator, Nanaimo

UNEMPLOYMENT ACTION CENTRE, Terrace
Presentation by Bill Goodacre, Terrace, February 17

UNEMPLOYMENT ACTION CENTRE, Trail (m)
Submission from Sandra Colquhoun, coordinator, Trail

UNEMPLOYMENT & GUIDANCE CENTRE, Barriere, B.C.
Presentation by Robert Johnson, Kamloops, March 3

UNITED NATIVE NATIONS FRIENDSHIP CENTRE (m)
Submission from Bertha Phelan, Executive Director, Vernon

UNITED NATIVE NATIONS, LOCAL 121
Presentation by Bob Warren, president, accompanied by H. Rice & B. Buckman, Victoria, March 17

UNITED STEEL WORKERS OF AMERICA, Local 480
Presentation by John Weir, Nelson, February 17

UNIVERSITY OF VICTORIA, Faculty of Law (m)
Submission from Dean L. R. Robinson, Victoria

UNIVERSITY OF VICTORIA, Faculty of School of Social Work (m)
Submission from faculty of staff, Victoria

UPPER SKEENA COUNSELLING & LEGAL ASSISTANCE SOCIETY
Presentation by Terry Brown, Prince Rupert, February 18

VANCOUVER ASSOCIATION FOR CHILDREN & ADULTS WITH LEARNING DISABILITIES
Presentation by Roman Piontkovsky, Vancouver, March 31

VANCOUVER COMMUNITY LEGAL ASSISTANCE SOCIETY
Presented by Gillian Andrew, Vancouver, March 30

VANCOUVER ISLAND HAVEN SOCIETY (m)
Unsigned submission, Nanaimo

VANCOUVER ISLAND UNEMPLOYED ACTION CENTRE
Presentation by Frank Walker, Victoria, March 17

VANCOUVER PEOPLE'S LAW SCHOOL
Presentation by Hamish Cameron, chairman, Vancouver, March 31

VANCOUVER PUBLIC LIBARY (m)
Submission from Judy Capes, chief librarian, Vancouver

VANCOUVER STATUS OF WOMEN
Presented by Laurie Rudland, Vancouver, March 24

VANCOUVER & DISTRICT PUBLIC HOUSING TENANTS ASSOCIATION (1978)
Presentation by Margaret Mitchell, secretary, Vancouver, March 31

VICKERS, DAVID
Victoria, March 16

VICTORIA BAR ASSOCIATION
Presentation by Witt Lapper on behalf of Executive, Victoria, March 17

VICTORIA NATIVE FRIENDSHIP CENTRE, B.C. ASSOCIATION OF INDIAN FRIENDSHIP CENTRES & NATIVE LAW STUDENTS ASSOCIATION
Presentation by David Seymour, Victoria, March 17

VILLAGE OF FORT NELSON
Presentation by Eleanor Summer on behalf of the Mayor and Council, Fort St. John, March 9

WEIR, ROSE ANN*
Volunteer worker, citizen advocacy group, Campbell River, March 17

WEST END TENANTS' ASSOCIATION
Presented by Greg Richmond, Vancouver, March 24

WESTMINSTER COMMUNITY LEGAL SERVICES SOCIETY
Presentation by Gayle Gavit, New Westminster, March 23

WHITEMAN, ALICE*
Cranbrook, February 18

WHITE, JAMES L. (m)
Mission

WIDOWS ASSOCIATION
Presentation by Elizabeth Rogers, Victoria, March 16

WILLIAMSON, PHIL (District Court Registrar)*
Prince Rupert February 18

WOMEN AGAINST THE BUDGET
Presentation by Gail Meredith, Vancouver, March 31

WOMEN WORKING FOR RIGHTS IN THE KOOTENAYS*
Presentation by Ann Orcas, Nelson, February 17

WOMEN'S RESEARCH CENTRE
Presentation by Diana Ellis, Vancouver, March 31

WORK OPPORTUNITIES FOR WOMEN (m)
Submission from Board of Directors, Powell River Employment Program Society

W. L. LANGHORNE AND ASSOCIATES
Presentation by Wendy Langhorne, Victoria, March 17

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* oral
(m) mail

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